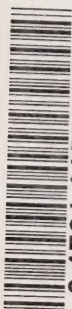


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Explanatory Notes Relating to the Income Tax Act, the Income Tax Regulations, the Canada Education Savings Act, the Canada Education Savings Regulations and the Excise Tax Act

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

June 2007



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Erratum

Explanatory Notes Relating to the Income Tax Act, the Income Tax Regulations, the Canada Education Savings Act, the Canada Education Savings Regulations and the Excise Tax Act

Page 28 of the English version

Clause 19

Registered retirement income funds – definitions

In the paragraph below, the words in bold are missing from the text.

Special provisions apply for RRIF annuitants turning 70 or 71 years of age in 2007. Specifically, the minimum amount that these annuitants must withdraw from their RRIFs in 2007 is set to nil. For those turning 70 years of age in 2007, the minimum amount for 2008 is also set to nil. However, to ensure that the existing preferential treatment for the portion of a RRIF withdrawal relating to the minimum amount continues to be available to these annuitants in the event that withdrawals are made, the law will apply for certain purposes as though the minimum amount were the amount that would otherwise have been determined (i.e., if it were not set to nil). This will be the case for the exemption from withholding tax, the spousal income attribution rules and **non-resident withholding taxes. Furthermore, these annuitants will be allowed to re-contribute to their RRIF** (or to a registered retirement savings plan) any RRIF withdrawals made in 2007 (and in 2008, if the annuitant turns 71 years of age in that year), up to the minimum amount that would otherwise have been determined for that year, and to claim an offsetting deduction.

Errata

Notes explicatives concernant la Loi de l'impôt sur le revenu, le Règlement de l'impôt sur le revenu, la Loi canadienne sur l'épargne-études, le Règlement sur l'épargne-études et la Loi sur la taxe d'accise

Page 28 de la version anglaise

Article 19

Fonds enregistrés de revenus de retraite – définitions

Dans le paragraphe ci-dessous, les mots en gras n'étaient pas dans le texte.

Special provisions apply for RRIF annuitants turning 70 or 71 years of age in 2007. Specifically, the minimum amount that these annuitants must withdraw from their RRIFs in 2007 is set to nil. For those turning 70 years of age in 2007, the minimum amount for 2008 is also set to nil. However, to ensure that the existing preferential treatment for the portion of a RRIF withdrawal relating to the minimum amount continues to be available to these annuitants in the event that withdrawals are made, the law will apply for certain purposes as though the minimum amount were the amount that would otherwise have been determined (i.e., if it were not set to nil). This will be the case for the exemption from withholding tax, the spousal income attribution rules and **non-resident withholding taxes. Furthermore, these annuitants will be allowed to re-contribute to their RRIF** (or to a registered retirement savings plan) any RRIF withdrawals made in 2007 (and in 2008, if the annuitant turns 71 years of age in that year), up to the minimum amount that would otherwise have been determined for that year, and to claim an offsetting deduction.

Explanatory Notes Relating to the Income Tax Act, the Income Tax Regulations, the Canada Education Savings Act, the Canada Education Savings Regulations and the Excise Tax Act



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Minister of Finance

June 2007



Department of Finance
Canada

Ministère des Finances
Canada



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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Regulations*, the *Canada Education Savings Act*, the *Canada Education Savings Regulations* and the *Excise Tax Act*, included in the *Budget Implementation Act, 2007*. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James. M. Flaherty, P.C., M.P.
Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

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Part 1
Amendments Related to Income Tax
Income Tax Act

Clause 2

ACB deduction – capital interest in trust

ITA

53(2)(h)(i.1)

Under paragraph 53(2)(h) of the *Income Tax Act* (the Act), certain amounts are generally deducted in computing the adjusted cost base (ACB) to a beneficiary of the beneficiary's capital interest in a trust. Subparagraph 53(2)(h)(i.1) generally ensures that distributions from a trust reduce the trust beneficiary's ACB of their capital interest in the trust, unless the amount represents proceeds of disposition of the interest or is otherwise included in the beneficiary's income. This subparagraph is amended, as a consequence of a series of amendments implementing new rules for "SIFT partnerships" and "SIFT trusts" (both of which terms are defined in subsection 248(1) of the Act), to exclude from the adjustment rule any amount that has been deemed by new subsection 104(16) of the Act to be a dividend received by the beneficiary.

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms "SIFT partnership" and "SIFT trust" apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition "SIFT trust" in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Clause 3

Amounts to be included in income

ITA

56

Section 56 of the Act provides a list of certain types of income that are required to be included in computing the income of a taxpayer under paragraph 3(a) of the Act from sources other than an office or an employment, a business or a property.

Pension income reallocation

ITA

56(1)(a.2)

New paragraph 56(1)(a.2) provides for the inclusion of a split-pension amount in the income of a pension transferee for a taxation year.

This amendment results from the Tax Fairness Plan announced on October 31, 2006. Under the Plan, spouses and common-law partners may, in certain circumstances, split eligible pension income with each other. This amendment applies to the 2007 and subsequent taxation years.

The terms "eligible pension income", "split-pension amount", and "pension transferee" are defined in new subsection 60.03(1) of the Act. Please refer to the commentary to that subsection for more information.

Clause 4**Other deductions**

ITA
60

Section 60 of the Act provides for various deductions in computing income, many of which relate to certain income inclusions required under section 56.

Pension income reallocation

ITA
60(c)

New paragraph 60(c) provides for the deduction of a split-pension amount from the income of a pensioner for a taxation year.

This amendment results from the Tax Fairness Plan announced on October 31, 2006. Under the Plan, spouses and common-law partners may, in certain circumstances, split eligible pension income with each other. This amendment applies to the 2007 and subsequent taxation years.

The terms “eligible pension income”, “split-pension amount” and “pensioner” are defined in new subsection 60.03(1) of the Act. Please refer to the commentary to that subsection for more information.

Clause 5**Pension income reallocation**

ITA
60.03

New section 60.03 of the Act is added as a result of the Tax Fairness Plan announced on October 31, 2006. Under the Plan, a pensioner may, in certain circumstances, allocate up to 50% of the pensioner’s eligible pension income (as defined by new subsection 60.03(1)) to his or her spouse or common-law partner. This section applies to the 2007 and subsequent taxation years.

Definitions

ITA
60.03(1)

New subsection 60.03(1) of the Act defines a number of terms that apply for the purposes of new paragraphs 56(1)(a.2) and 60(c), new section 60.03, new subsections 153(1.3), (2) and 160(1.3). These definitions apply for the 2007 and subsequent taxation years.

“joint election”

A joint election for a taxation year is an election made jointly in prescribed form by a pensioner and a pension transferee. The election must be filed with the Minister of National Revenue with both the pensioner’s and the pension transferee’s returns of income for the taxation year in respect of which the election is made, on or before their respective filing-due dates for the taxation year. Please refer to the commentary to the definitions of “pensioner” and “pension transferee” in this subsection for more information.

“pension transferee”

A pension transferee for a taxation year means an individual who is resident in Canada at the end of the calendar year in which the taxation year ends (or immediately before death). The individual has to be married to or be in a common-law partnership with a pensioner at any time in the taxation year and not living separate and apart from the pensioner (because of a breakdown of their relationship) at the end of the taxation year and for a period of 90 days or more commencing in the taxation year. Please refer to the commentary to the definition of “pensioner” in this subsection for more information.

“pensioner”

A pensioner for a taxation year means an individual who is resident in Canada at the end of the calendar year in which the taxation year ends (or immediately before death) and who received eligible pension income in the taxation year. Please refer to the commentary to the definition of “eligible pension income” in this subsection for more information.

“pension income”

Pension income has the meaning assigned by section 118 of the Act – that is, it takes the meaning set out in subsection 118(7), as modified by subsections 118(8) and (8.1).

“qualified pension income”

Qualified pension income has the meaning assigned by section 118 of the Act – that is, it takes the meaning set out in subsection 118(7), as modified by subsections 118(8) and (8.1).

“split-pension amount”

Split-pension amount for a taxation year is the amount elected by a pensioner and a pension transferee in a joint election for the taxation year. The amount elected cannot exceed 50% of the eligible pension income of the pensioner for the taxation year multiplied by the number of months in the pensioner’s taxation year in which the pensioner was married to, or was in a common-law partnership with, the pension transferee divided by the number of months in the pensioner’s taxation year. Please refer to the commentary to the definitions of “joint election”, “pensioner”, “pension transferee” and “eligible pension income” in this subsection for more information.

Example

Gisèle and Jean-Guy have been cohabiting in a conjugal relationship since July 1, 2006. Jean-Guy will receive pension income under a Registered Pension Plan (RPP) of \$26,400 in 2007. Jean-Guy may split up to 50% of his 2007 RPP income for the six-month period in 2007 during which he was considered to be a common-law partner of Gisèle. That is, Jean-Guy may allocate \$6,600 of his \$26,400 RPP income to Gisèle for 2007 – $0.5A \times B/C = [0.5 \times (\$26,400 \times 6 \text{ months in common-law partnership} / 12 \text{ months in the year})]$.

“eligible pension income”

Eligible pension income of a pensioner for a taxation year has the meaning assigned by subsection 118(7) of the Act.

Effect of pension income split

ITA

60.03(2)

New subsection 60.03(2) of the Act ensures that for the purpose of calculating the pension credit in subsection 118(3) of the Act, the pensioner is treated as not having received the portion of the pensioner's pension income and qualified pension income allocated to the pension transferee – the split-pension amount. The pension transferee is on the other hand treated as having received the split-pension amount. In addition, the pension income and the qualified pension income maintain their character for the purpose of calculating a pension credit. That is, where the pensioner allocates pension income to the pension transferee, the pension transferee will receive the split-pension income as pension income. Similarly, if the allocation is in respect of qualified pension income, the pension transferee will receive the split-pension income as qualified pension income.

For example, where the pensioner is over 65 years of age and the pensioner splits pension income (e.g. RRIF income) with a pension transferee who is under 65 years of age, the split-pension income will be pension income to the pension transferee and therefore the pension transferee will not be eligible for the pension credit under subsection 118(3). However, where that pensioner splits qualified pension income with that pension transferee, the pension transferee will be eligible for the pension credit under that subsection.

Please refer to the commentary to the definitions of “pension income”, “pensioner”, “pension transferee”, “qualified pension income” and “split-pension amount” in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

Limitation

ITA

60.03(3)

New subsection 60.03(3) of the Act ensures that a pensioner may file only one joint election for a particular taxation year. In other words, a pensioner may for a taxation year, split-pension income with only one pension transferee. Please refer to the commentary to the definitions of “joint election”, “pensioner”, “pension transferee” and “split-pension amount” in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

False declaration

ITA

60.03(4)

New subsection 60.03(4) of the Act provides that a joint election is invalid in cases where the Minister of National Revenue establishes that a pensioner or a pension transferee has knowingly or under circumstances amounting to gross negligence made a false declaration in the joint election. Please refer to the commentary to the definitions of “joint election”, “pensioner” and “pension transferee” in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

Clause 6

“eligible dividend”

ITA
89(1)

The definition “eligible dividend” in subsection 89(1) of the Act identifies those dividends that qualify, in the hands of individuals resident in Canada, for the enhanced dividend “gross-up” and the enhanced dividend tax credit. As part of a series of amendments implementing new rules for “SIFT partnerships” and “SIFT trusts” (both of which terms are defined in subsection 248(1) of the Act), the definition is amended to include as eligible dividends certain amounts distributed by SIFT trusts to their beneficiaries and certain amounts allocated by SIFT partnerships to their members. In broad terms, these are amounts of a SIFT trust’s (or SIFT partnership’s) “non-portfolio earnings” distributions (or allocations) that have been taxed at a rate comparable to the rate that applies to corporations. The notes relating to new section 122 and new Part IX.1 of the Act explain in more detail how those amounts are taxed.

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) and the application rule in subsection 122.1(2) and the commentary to the definition “SIFT partnership” in subsection 197(1) of the Act.

Clause 7

Partnerships and their members

ITA
96

Section 96 of the Act provides general rules for determining the income or loss of a partnership and its members.

Deemed dividend of SIFT partnership

ITA
96(1.11)

New subsection 96(1.11) of the Act is introduced concurrently with the introduction of the tax payable by a SIFT partnership under Part IX.1 of the Act. Subsection 96(1.11) effectively provides that Part IX.1 tax payable by a SIFT partnership reduces the amount of “taxable non-portfolio earnings” (as defined in subsection 197(1) of the Act) that will be subject to tax in the hands of the members of the partnership under Part I of the Act. More specifically, paragraph 96(1.11)(a) amends the wording of paragraph 96(1)(f) of the Act where Part IX.1 tax is payable in such a way as to reduce the allocation of partnership income to a member of the partnership by an amount representing the member’s share of the taxable non-portfolio earnings.

A portion of that allocation is deemed by paragraph 96(1.11)(b) to be a dividend received by the partnership from a taxable Canadian corporation. This deemed dividend is allocated to the members of the partnership in the same proportion as the taxable non-portfolio earnings. The deemed dividend is the amount by which the taxable non-portfolio earnings of the partnership for a taxation year exceeds the tax payable under Part IX.1 for the year.

The allocation of income or loss among partners is generally a matter of the partnership agreement. Paragraph 96(1)(f) ensures that the character of allocated income, which depends on the source of the income, is maintained in the hands of the partner. Subsection 96(1.11) effectively changes the amount and character of that source, but does not affect the allocation that would derive from the partnership agreement.

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined term “SIFT partnership” applies, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT partnership” in subsection 197(1) of the Act.

Clause 8

Trusts and their beneficiaries

ITA

104

Section 104 of the Act includes many of the rules that apply to the income taxation of trusts and their beneficiaries.

Deduction in computing trust’s income

ITA

104(6)

Subsection 104(6) of the Act generally permits a trust to deduct, in computing its income for a taxation year, any income payable to a beneficiary under the trust. Paragraphs 104(6)(a) to (a.3) apply to various special kinds of trusts, while paragraph 104(6)(b) applies more generally. Paragraph 104(6)(b) calculates the amount that a trust can deduct against its income. Generally, the deductible amount is the amount of the trust’s income that is payable to the beneficiaries and the amount included in the income of the beneficiaries under subsection 105(2).

As part of a series of measures to implement new rules for “SIFT trusts” (defined in subsection 248(1) of the Act), paragraph 104(6)(b) is amended in two respects.

First, subparagraph 104(6)(b)(i) is amended to add the term “adjusted distributions amount” to refer to the amount determined under that subparagraph.

Second, new subparagraph 104(6)(b)(iv) is added. This new provision limits the deduction that a SIFT trust can claim under subsection 104(6). The provision’s general effect is to prevent a SIFT from deducting under subsection 104(6) any amount of its “non-portfolio earnings” (defined in new subsection 122.1(1) of the Act) that it has made payable to a beneficiary. The structure of the provision has the result of applying an ordering as between non-portfolio earnings (NPE) and other income, such that NPE is the last income to be considered to have been distributed. This result will typically be beneficial to the SIFT trust, as it will allow it to use deductions in computing taxable income – notably non-capital loss carryovers from other taxation years – to reduce the amount of its NPE that are subject to tax.

Specifically, new subparagraph 104(6)(b)(iv) reduces the amount that a SIFT trust can deduct under subsection 104(6), in computing its income for a taxation year, by the excess of the SIFT trust’s adjusted distributions over that part of its income that is not NPE. This second amount is in turn computed through subtraction: it is the amount by which the SIFT trust’s gross income for the taxation year (that is, before the subsection 104(6) deduction itself) exceeds its NPE for the taxation year.

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

SIFT deemed dividend

ITA

104(16)

New subsection 104(16) of the Act is a central part of a series of measures to implement new rules for trusts that are “specified investment flow-throughs” or “SIFT trusts” (newly defined in subsection 248(1) of the Act). Subsection 104(16) recharacterizes as taxable dividends certain amounts that become payable to a beneficiary of a SIFT trust. These correspond to amounts that have borne tax at the level of the SIFT trust, and which it has not been permitted to deduct in computing its income. The combined effect is thus to treat these amounts in much the same manner as if they had been earned by – and distributed as dividends from – a corporation.

In order for subsection 104(16) to apply, an amount must be determined under new subparagraph 104(6)(b)(iv) of the Act in respect of a SIFT trust for a taxation year. This “non-deductible distributions amount” represents the portion of the SIFT trust’s “non-portfolio earnings” (now defined in new subsection 122.1(1) of the Act) that is considered to have become payable to its beneficiaries in the taxation year.

If a SIFT trust has a non-deductible distributions amount for a taxation year, paragraph 104(16)(a) provides that every beneficiary to whom any amount became payable by the trust in the year is treated as having received a taxable dividend from a taxable Canadian corporation. (Note that subsection 104(24) applies in determining whether an amount has become payable to a beneficiary.) The number and timing of these deemed dividends will correspond to the number and timing of the amounts that became payable to beneficiaries: in effect, a proportionate part of each amount that becomes payable is treated as having been a taxable dividend.

Paragraph 104(16)(b) sets out a formula for determining the amount of a dividend received under paragraph 104(16)(a) from a SIFT trust by a beneficiary. The formula apportions the SIFT trust’s non-deductible distributions amount for the taxation year in question. A given dividend under paragraph 104(16)(a) is linked to a particular amount that became payable to the beneficiary. The amount of the dividend is thus that proportion of the non-deductible distributions amount that the particular amount that became payable is of the total of all amounts, each of which became payable in the taxation year by the SIFT trust to a beneficiary under the SIFT trust.

If an amount is treated as a dividend because of subsection 104(16), it will be subject to tax in the hands of a taxable beneficiary under the rules that apply to taxable dividends received from corporations resident in Canada. To prevent the amount from also being included in income under subsection 104(13) as income from a trust, paragraph 104(16)(c) is introduced. This paragraph treats the amount of any dividend under paragraph 104(16)(a) as not being an amount payable to the beneficiary, for the purpose of subsection 104(13). (It should be noted that the amount remains an amount payable to the beneficiary for the purposes of, for example, subsection 104(6).)

Paragraph 104(16)(d) ensures that Part XIII of the Act applies appropriately to amounts that are deemed to be dividends by paragraph 104(16)(a). The SIFT trust is treated for this purpose as a resident corporation that paid the dividend. This ensures, among other things, that the SIFT trust is responsible for the same obligation to withhold tax under Part XIII as a corporation resident in Canada is when it pays a dividend to a non-resident.

New subsection 104(16) is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Amount payable

ITA
104(24)

Subsection 104(24) of the Act is relevant in determining when an amount has become payable to a beneficiary under a trust, for the purposes of certain provisions of the Act. New subsection 104(16) is added to the list of those provisions. This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Clause 9**Personal credits**

ITA
118

Section 118 of the Act provides for the calculation of various personal tax credits. These include the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative. These credits are calculated by multiplying the dollar amount in respect of the particular credit by the lowest personal tax rate (15.5% for the 2007 and subsequent taxation years).

Married or common-law partnership status

ITA
118(1)(a)

Paragraph 118(1)(a) of the Act deals with the tax credit available to persons who are married or in a common-law partnership. Subparagraph 118(1)(a)(ii) sets out the maximum amount of income (the “threshold”) that a taxpayer’s spouse or common-law partner may earn without reducing the married or common-law credit. This subparagraph is amended to repeal this threshold with the effect that each dollar of income of the taxpayer’s spouse or common-law partner will reduce the married or common-law credit. In conjunction with the repeal of the threshold, the maximum amount in respect of a spouse or common-law has been increased. For further information on the increase of this amount, see the commentary to subsection 118(3.2).

This amendment applies to the 2007 and subsequent taxation years.

Wholly dependent relative

ITA
118(1)(b)

Paragraph 118(1)(b) of the Act deals with the tax credit available to persons who are single and have a wholly dependent relative. Subparagraph 118(1)(b)(iv) sets out the maximum amount of income (the “threshold”) that a taxpayer’s wholly dependent relative may earn without reducing the wholly dependent relative credit. This subparagraph is amended to repeal this threshold with the effect that each dollar of income of the taxpayer’s wholly dependent relative will reduce the wholly dependent relative credit. In conjunction with the repeal of the threshold, the maximum amount in respect of a wholly dependent relative has been increased. For further information on the increase of this amount, see the commentary to subsection 118(3.2).

This amendment applies to the 2007 and subsequent taxation years.

Child amount

ITA

118(1)(b.1)

New paragraph 118(1)(b.1) provides the amount for the child tax credit. The amount for the credit is \$2,000 per eligible child who is under the age of 18 years at the end of a taxation year and is available to:

- in the case of a child that resides together with the child's parents throughout the taxation year, either of those parents; and
- in the case where the child does not reside together with the child's parents throughout the taxation year, by the parent who is eligible to claim the wholly dependent relative credit for the taxation year in respect of that child (or would be so eligible if that child was the parent's only child).

This amount of \$2,000 will be indexed after 2007.

This amendment applies to the 2007 and subsequent taxation years.

Age credit

ITA

118(2)

Subsection 118(2) of the Act provides an age tax credit for individuals who are over 65 years of age or who reach age 65 in the year. The age credit is calculated by multiplying the lowest personal income tax rate by an amount that is indexed to inflation. The Tax Fairness Plan announced on October 31, 2006 proposed to increase the amount included in determining the age credit by \$1,000. Subsection 118(2) is amended to increase that amount from \$4,066 to \$5,066 effective January 1, 2006.

Pension credit

ITA

118(3) and (7)

Subsection 118(3) of the Act provides for a non-refundable credit for individuals who are in receipt of eligible pension income. The pension income credit available to an individual who is 65 years of age or older at the end of a taxation year is based on the individual's "pension income". For an individual who is under 65 years of age at the end of a taxation year, the credit is based on the individual's "qualified pension income".

The expressions pension income and qualified pension income are defined in subsection 118(7). Pension income includes, among other things, lifetime pensions under a pension plan, annuity payments under a registered retirement savings plan or a deferred profit sharing plan and payments under a registered retirement income fund. Qualified pension income is a subset of pension income. It is limited to lifetime pensions under a pension plan and certain other payments received as a result of the death of the individual's spouse or common-law partner.

New section 60.03 of the Act sets out the substantive provisions to enable Canadian residents to split their eligible pension income with their Canadian resident spouse or common-law partner. For this purpose, eligible pension income is income that qualifies for the pension income credit in section 118.

Subsection 118(3) is amended, in conjunction with amendments to subsection 118(7), to simplify the interaction of the pension income credit rules with the pension income splitting rules. This is accomplished by moving the age-based eligibility criteria from the substantive provision in subsection 118(3) to the new definition "eligible pension income" in subsection 118(7).

Under amended subsection 118(3), the credit is based on an individual's eligible pension income for the year. Eligible pension income is defined as pension income, for individuals who are 65 years of age and over at the end of a taxation year, and as qualified pension income, for individuals who are under 65 years of age at the end of a taxation year. These amendments do not represent any change in policy for the pension income credit.

Subsection 118(7) is also amended so that it is subject to new subsection 118(8.1), which sets out a special rule to expand eligible pension income to include bridging benefits under a registered pension plan (RPP). For details, see the commentary to subsection 118(8.1).

These amendments apply to the 2007 and subsequent taxation years.

Additions to personal credits – spouse or common-law partner or wholly dependent person

ITA
118(3.2)

Subsection 118(3.2) of the Act provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual may claim for a wholly dependent relative (for 2006 to 2009 inclusive). Subsection 118(3.2) is amended to provide that the credit in respect of a spouse or common-law partner and the credit that a single individual may claim for a wholly dependent relative for 2007 will be based on an amount of \$8,929.

Further amendments provide that, in addition to the annual increases provided under the indexing provisions, the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative will be increased

- for 2008, by \$200; and
- for 2009, by the greater of \$600 and the amount required to bring these amounts to \$10,000.

This amendment applies to the 2007 and subsequent taxation years.

Additions to personal credits – net income threshold

ITA
118(3.3)

Subsection 118(3.3) of the Act provides, in addition to the annual increases provided under the indexing provisions, for annual increases (for 2006 to 2009 inclusive) to the amount used to compute the net income threshold for the credit in respect of a spouse or common-law partner and the credit that a single individual may claim for a wholly dependent relative. As a result of the repeal of the threshold amount in paragraphs 118(1)(a) and (b), subsection 118(3.3) is no longer relevant. Accordingly, it is repealed effective for 2007 and subsequent taxation years.

Limitations

ITA
118(4)

Subsection 118(4) of the Act provides rules governing the tax credits available under subsection 118(1). Paragraph 118(4)(b) provides that not more than one individual is entitled to the wholly dependent relative credit for the same person or the same self-contained domestic establishment. Where more than one individual may otherwise be entitled to the credit, they must agree on which individual will claim the credit. If they fail to agree, the credit will not be allowed to any of them.

Paragraph 118(4)(b) is amended consequential to the introduction of the child tax credit in subsection 118(1) by adding a reference to new paragraph 118(1)(b.1) of the description of B in that subsection. This amendment ensures that not more than one individual will be entitled to the child tax credit for the same child or the same self-contained domestic establishment. Where more than one individual may otherwise be entitled to the credit, they must agree on which individual will claim the credit. If they fail to agree, the credit will not be allowed to any of them.

This amendment applies to the 2007 and subsequent taxation years.

Interpretation

ITA

118(8)

Subsection 118(8) of the Act provides that certain amounts are not included in the definitions “pension income” and “qualified pension income” in subsection 118(7). Amounts excluded by virtue of this provision include, under paragraph 118(8)(d), the portion of any otherwise qualifying payment for which a deduction is claimed under another provision of the Act and, under paragraph 118(8)(e), lifetime pensions payable under a retirement compensation arrangement (RCA) or an employee benefit plan (EBP).

Subsection 118(8) is amended in two ways. First, paragraph 118(8)(d) is amended to disregard any deduction claimed under new paragraph 60(c) in connection with the new pension income splitting rules. This amendment avoids a possible circularity in the legislative provisions.

Subsection 118(8) is also amended to exclude, under new paragraph 118(8)(f), lifetime pensions payable under an unfunded supplemental employee retirement plan. This amendment corrects a technical deficiency and ensures consistent treatment with funded supplemental employee retirement plans, which are already excluded by virtue of the RCA and EBP exclusions. Lifetime pensions payable under the legislative arrangements established for federally appointed judges and Lieutenant Governors are not affected by this new exclusion and thus remain eligible income.

These amendments apply to the 2007 and subsequent taxation years.

Bridging benefits

ITA

118(8.1)

Currently, for purposes of subsection 118(7), qualifying payments under a registered pension plan (RPP) do not include bridging benefits. These are temporary benefits paid to an RPP member, in addition to the member's lifetime pension, the purpose of which is to bridge the gap from retirement to age 65 (which is the age at which payments under the Canada Pension Plan or the Québec Pension Plan generally commence to be paid).

New subsection 118(8.1) of the Act provides a special rule to ensure that RPP bridging benefits are considered to be eligible pension income, by deeming such benefits to be in respect of a life annuity.

This amendment applies to the 2007 and subsequent taxation years.

Rounding

ITA

118(9)

Subsection 118(9) of the Act provides for the rounding of amounts to be used in computing the increases described in subsections 118(3.1) to (3.3). Subsection 118(9) is amended consequential to the repeal of subsection 118(3.3) to delete the reference to that subsection.

This amendment applies to the 2007 and subsequent taxation years.

Child tax credit

ITA
118(9.1)

New subsection 118(9.1) of the Act is added consequential to the introduction of the child tax credit in subsection 118(1). This new subsection provides that in the case of the event of a birth, adoption or death of a child in a taxation year, the expression “throughout the taxation year” found in new paragraph 118(1)(b.1) of the description of B in that subsection is to be read “throughout the portion of the taxation year that is after the child’s birth or adoption or before the child’s death”. This new provision ensures that in the year of such an event, the individual otherwise entitled to the credit be allowed the totality of the credit.

This amendment applies to the 2007 and subsequent taxation years.

Clause 10**Transfer of unused credits to spouse or common-law partner**

ITA
118.8

Section 118.8 governs the transfer to a spouse or common-law partner of certain unused personal tax credits. The credits that may be transferred are the tuition and education tax credits, the age, pension and disability tax credits.

Section 118.8 is amended, consequential to the introduction of the child tax credit in subsection 118(1), to allow an individual to transfer to a spouse or common-law partner the unused portion of that tax credit.

This amendment applies to the 2007 and subsequent taxation years.

Clause 11**Integration with provincial taxes – individual income for the year**

ITA
120(3)

Section 120 of the Act sets out rules for the integration of the federal and provincial income taxes on individuals. Subsection 120(3) defines the phrase “the individual’s income for the year” for the purposes of the section. Trusts are individuals for income tax purposes and, unless specially provided for, are subject to section 120.

As part of a series of measures to implement new rules for “SIFT trusts” (defined in subsection 248(1) of the Act), this definition is amended. In brief, those measures treat certain distributions by SIFT trusts to their beneficiaries more like dividends: the SIFT trust is prevented from deducting the amount in computing its income, the amount is taxed in the hands of the SIFT trust, and the distribution becomes a taxable dividend in the hands of the recipient beneficiary.

Since the tax is applied, at the trust level, at a rate that approximates a combined federal and provincial corporate income tax rate, it is appropriate to exclude amounts that have been subject to the tax from what might otherwise be an overlapping provincial tax. It is also appropriate not to subject these amounts to the additional federal income tax that applies to an individual’s income not earned in a province.

This amendment – which takes the form of new paragraph 120(3)(d) – ensures that to the extent the income of a SIFT trust has borne this corporate-style tax, it is neither taxed provincially (in those provinces that have agreed to follow the federal measurement of taxable income) nor subjected to the additional federal tax.

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Clause 12

Tax payable by *inter vivos* trust

ITA
122(1)

Section 122 of the Act sets out, for most *inter vivos* trusts, the tax payable under Part I of the Act. Subsection 122(1) provides the section’s basic rules: the rate of the tax is 29%; and the base is a trust’s “amount taxable” for a taxation year. “Amount taxable” is defined in subsection 117(2) of the Act as taxable income for the taxation year, or taxable income earned in Canada for the taxation year, in the case of a non-resident.

As part of a series of measures to implement new rules for “SIFT trusts” (defined in subsection 248(1) of the Act), subsection 122(1) is amended to include an additional amount in the tax payable by a SIFT trust. This additional amount is computed, in new paragraph 122(1)(b), as the product of a specified tax rate and the SIFT trust’s “taxable SIFT distributions” for the taxation year. (It should be noted that while it will at present be a positive amount, the product determined under paragraph 122(1)(b) could, depending on future tax rates, be negative in some cases.)

Conceptually, the rate of tax under paragraph 122(1)(b) is the difference between a combined federal-provincial tax rate on corporate income (using a reasonable surrogate for provincial rates), and the federal income tax that applies to *inter vivos* trust income. Mechanically, the rate is a positive or negative decimal fraction that has three components. The first component is the “net corporate income tax rate” in respect of the SIFT trust for the taxation year. This term, newly defined in subsection 248(1), in effect refers to the general corporate tax rate net of the rate reduction applicable for the taxation year and net of the “provincial abatement”. To this is added the “provincial SIFT tax factor” for the taxation year (also defined in subsection 248(1); currently 0.13). The final component is the decimal equivalent of the rate of tax that applies under paragraph 122(1)(a) to the trust’s amount taxable: this is deducted from the total of the first two components.

The base for the tax under paragraph 122(1)(b), the SIFT trust’s taxable SIFT distributions for the taxation year, is defined in new subsection 122(3). The notes to that subsection describe this amount in detail. One important point is that a SIFT trust’s taxable SIFT distributions amount is not necessarily the same as its “non-deductible distributions amount”. The latter amount is in effect treated as one or more taxable dividends in the hands of the SIFT trust’s beneficiaries, and taxed accordingly. The SIFT trust’s taxable SIFT distributions amount, meanwhile, is the amount that will be subject to tax, in the hands of the SIFT itself, at a rate that approximates a combined federal and provincial corporate income tax rate. Just as a corporation may pay a dividend without having had any of its own income subject to tax (because, for example, it has used a loss carryover to reduce its taxable income to nil), the beneficiaries of a SIFT trust may be treated as having received taxable dividends even though the SIFT trust itself pays no tax under paragraph 122(1)(b).

This amendment is deemed to have come into force on October 31, 2006. As a practical matter, the amendment will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Definitions

ITA
122(3)

New subsection 122(3) of the Act sets out two definitions that relate to the taxation of SIFT trusts. These definitions are deemed to have come into force on October 31, 2006. As a practical matter, the definitions will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

“non-deductible distributions amount”

A SIFT trust’s “non-deductible distributions amount” is defined in new subsection 104(16) of the Act. This definition is adopted in subsection 122(3) as well. The “non-deductible distributions amount” represents in effect the portion of the SIFT trust’s “non-portfolio earnings” (now defined in new subsection 122.1(1)) that is considered (by way of subparagraph 104(6)(b)(iv)) to have become payable to its beneficiaries in the taxation year.

“taxable SIFT trust distributions”

The “taxable SIFT trust distributions” of a SIFT trust for a taxation year is the lesser of two amounts. The first amount is the SIFT trust’s “amount taxable” for the taxation year. Since a SIFT trust must be resident in Canada, this is the same as its taxable income for the taxation year (see subsection 117(2) of the Act).

The second amount is a “grossed-up” function of the SIFT trust’s non-deductible distributions amount for the taxation year. The gross-up restores the amount to its presumed pre-tax equivalent, and so ensures that the tax under new paragraph 122(1)(b) applies to the full amount of the SIFT’s earnings that supported its non-deductible distributions.

Clause 13

Definitions

ITA
122.1(1)

New subsection 122.1(1) of the Act sets out a number of definitions that apply for the purposes of the measures to implement new rules for “SIFT trusts” and, in some cases, “SIFT partnerships” (both of which terms are defined in subsection 248(1) of the Act). These definitions apply for the purposes of sections 104 and 122 of the Act, as well as for the purposes of new section 122.1 itself. The definitions are deemed to have come into force on October 31, 2006. As a practical matter, they will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to subsections 122.1(2) and 197(8) of the Act.

“entity”

An “entity” is defined to mean a corporation, a trust or a partnership.

“equity value”

The “equity value” of an entity at any time is the total fair market value of all interests in the entity. More specifically, it is the total fair market value of all of the issued and outstanding shares of a corporation, of all of the income and capital interests in a trust, or of all of the interests in a partnership.

“investment”

“Investment” in a trust or partnership is meant to cover a broad range of properties and rights. It encompasses not only a property that is a “security” (itself newly defined in this subsection) of the trust or partnership, but also any right that can reasonably be considered to replicate a return on, or the value of, such a security.

“non-portfolio earnings”

A SIFT trust’s “non-portfolio earnings” for a taxation year is the total of two amounts. The first amount, in paragraph (a) of the definition, is the total net amount of the SIFT trust’s incomes for the year from businesses it carried on in Canada and from “non-portfolio properties”. Besides the netting of any losses for the taxation year from such sources, taxable dividends are excluded from this amount. The second amount, in paragraph (b) of the definition, is the net amount of the SIFT trust’s taxable capital gains from dispositions in the taxation year of non-portfolio properties.

“non-portfolio property”

A trust’s, or partnership’s, “non-portfolio property” is a property of any of three types. The first type is comprised of certain securities of a “subject entity” (newly defined in this subsection). These are securities that either:

- have a total fair market value that is greater than 10% of the equity value of the subject entity; or
- make up – together with any securities that the trust or partnership holds of entities affiliated with the subject entity – more than 50% of the equity value of the trust or partnership.

The second type of non-portfolio property is a “Canadian real, immovable or resource property” (see the new definition in subsection 248(1) of the Act). A property that meets this definition will be a non-portfolio property of the trust or partnership only if the total fair market value of all of the Canadian real, immovable or resource properties held by the trust or partnership is greater than 50% of its equity value. It should be noted that for this purpose there is no difference among the various kinds of Canadian real, immovable or resource properties. For example, assume that a trust that has an equity value of \$1 billion holds Canadian resource properties that have a total fair market value of \$350 million, and real properties situated in Canada that have a total fair market value of \$175 million. All of those Canadian resource properties and real properties are non-portfolio properties of the trust, since their total fair market value (\$525 million) exceeds 50% of its equity value.

The third type of non-portfolio property is property that the trust or partnership (or a non-arm’s length trust or partnership) uses in the course of carrying on a business in Canada.

“public market”

“Public market” is defined to include any trading system or other organized facility through which securities that are qualified for public distribution may be listed or traded. Excluded from the definition, however, is any facility that operates solely for the issuance or redemption (or cancellation or acquisition) of a security by its issuer. For example, the fact that a mutual fund allows unitholders to redeem their units does not mean that the mutual fund is operating a public market in respect of the units.

“qualified REIT property”

“Qualified REIT property” of a trust is defined to mean a property of any of four types. The first type is “real or immovable property” (newly defined in this subsection) situated in Canada.

The second type of property is comprised of securities of a “subject entity” (newly defined in this subsection), if the entity derives all or substantially all of its revenues directly from maintaining, improving, leasing or managing real or immovable properties that are capital properties of the trust (including real or immovable properties that the trust holds together with one or more other persons or partnerships). This allows a REIT (real estate investment trust) to hold shares of a management subsidiary that provides services to the REIT such as leasing of the REIT’s solely or jointly owned properties.

The third type of property is comprised of securities of a “subject entity”, if the entity holds no property other than legal title to real or immovable property and property that is ancillary to the earning by the trust of “rent from real or immovable properties” (newly defined in this subsection) and capital gains from dispositions of real or immovable properties. This allows a REIT to own nominee corporations that act as bare trustees and that hold individual real or immovable properties on behalf of the REIT.

The fourth type is property that is ancillary to the earning by the trust of rent from real or immovable properties and capital gains from dispositions of real or immovable properties. For example, a REIT can hold office furniture and computers that are ancillary to its operations.

“real estate investment trust”

A trust is a “real estate investment trust” (REIT) for a taxation year if it is resident in Canada throughout the year and meets four conditions. First, the trust must at no time in the year hold any non-portfolio property other than “qualified REIT properties” (newly defined in this subsection).

The second condition is that at least 95% of the trust’s revenues for the taxation year are derived from “rent from real or immovable properties” (newly defined in this subsection), interest, capital gains from dispositions of real or immovable properties, dividends, and royalties.

Third, at least 75% of the trust’s revenues for the taxation year are derived from rent from real or immovable properties situated in Canada, interest from mortgages, or hypothecs, on real or immovable properties situated in Canada, and capital gains from dispositions of real or immovable properties situated in Canada.

Fourth, it must be the case that at no time in the year does the total fair market value of all real or immovable properties situated in Canada, cash and properties described in clause 212(1)(b)(ii)(C) of the Act (generally speaking, debt of or guaranteed by a government) equal less than 75% of the trust’s equity value.

“real or immovable property”

“Real or immovable property” is a term whose meaning derives from private law. Its definition in this context modifies that meaning in three respects. First, there is included as real or immovable property a security of a trust that itself satisfies the four conditions that make up the definition “real estate investment trust”. (Also included is a security of an entity other than a trust that would satisfy those conditions if it were a trust.)

Second, included as a real or immovable property is an interest in real property or a real right in immovables (other than a right to a rental or royalty described in paragraph (d) or (e) of the definition “Canadian resource property” in subsection 66(15) of the Act). An interest in real property is defined in subsection 248(4) of the Act to include a leasehold interest in real property. (For civil law purposes, a real right in immovables is defined in subsection 248(4.1) to include a lease.)

Third, only certain depreciable property is included in the definition. Depreciable property that is included is (i) a property included (otherwise than by an election) in Class 1, 3, or 31 of Schedule II to the *Income Tax Regulations*, (ii) a property ancillary to the ownership or utilization of a property described in (i), or (iii) a lease in, or a leasehold interest in respect of, land or property described in (i).

Property ancillary to the ownership or utilization of, for example, a building in Class 1 could be a parking lot, a fence, or a solar panel.

“rent from real or immovable properties”

“Rent from real or immovable property” is defined to include rent or similar payments for the use of, or right to use, real or immovable properties and payment for services ancillary to the rental of real or immovable properties and customarily supplied or rendered in connection with the rental of real or immovable properties. Examples of services that are ancillary and customarily supplied or rendered in connection with the rental of an office tower could be concierge services, after-hours HVAC or; for the rental of a residential building, could be coin operated washing machines or snow removal; but would not include any form of nursing or medical care.

Rent from real or immovable property does not include (i) payment for services supplied or rendered, other than those described above, to the tenants of such properties, (ii) fees for managing or operating such properties, (iii) payment for occupation of a room in a hotel or other similar lodging facility, or (iv) rent based on profits.

“security”

A “security” of an entity is any of a wide variety of rights, conferred by the entity in question or by another entity that is affiliated with it. What these rights have in common is that they entitle, or may entitle, someone to receive an amount of the capital, revenue or income of the entity in question, or an amount of interest paid or payable by it. “Security” thus encompasses – among other rights – shares of a corporation, interests in a trust or partnership, and liabilities of an entity, as well as rights to acquire any of those.

“SIFT trust”

A “specified investment flow-through trust” or “SIFT trust” for a taxation year means a trust that meets the following conditions at any time during the taxation year: it is resident in Canada, investments in it are listed or traded on a stock exchange or other public market, and it holds one or more non-portfolio properties. A real estate investment trust (REIT) is not a SIFT trust.

Regarding the application of this definition for the 2007 to 2010 taxation years for a trust that was, on October 31, 2006, a SIFT trust under this definition, refer to the commentary to subsection 122.1(2).

“subject entity”

A “subject entity” is a trust or corporation that is resident in Canada, a “Canadian resident partnership” (newly defined in subsection 248(1) of the Act) or – if its principal source of income is one or any combination of sources in Canada – a non-resident person or a partnership other than a Canadian resident partnership.

Application of definition “SIFT trust”

ITA

122.1(2)

New subsection 122.1(2) of the Act provides a rule for the application of the definition “SIFT trust” in subsection (1) for the 2007 to 2010 taxation years. Generally, a trust that was not a SIFT trust on October 31, 2006, under the definition in subsection 122.1(1), will become a SIFT trust only for the taxation year in which it first becomes a SIFT trust under that definition. However, where a trust would, under the text of that definition, be a SIFT trust on October 31, 2006, subsection 122.1(2) provides that the SIFT trust definition will not apply until the earlier of the trust’s 2011 taxation year or the taxation year in which the trust exceeds the normal growth guidelines issued by the Department of Finance on December 15, 2006 unless that excess arose as a result of a prescribed transaction.

Clause 14

General rate reduction percentage - corporate tax reductions

ITA

123.4(1)(e)

Section 123.4 provides a tax reduction to all corporations that earn full rate taxable income in a taxation year. The amount of the deduction is calculated by multiplying the corporation’s general rate reduction percentage by the corporation’s full rate taxable income for the year. The applicable percentage will increase to 9.5% for taxation years that end after 2010, prorated for taxation years that begin before 2011.

Clause 15**Deemed dividend – partnership**

ITA

126(8)

Subsections 126(1) and (2) of the Act provide rules under which a taxpayer may deduct, from tax otherwise payable, credits in respect of foreign income tax that they have paid on foreign non-business income and foreign business income, respectively. Neither credit may exceed the Canadian tax otherwise payable in respect of the foreign-sourced income. Canadian tax otherwise payable on foreign source income is generally determined by reference to the ratio of the net income from sources in a foreign country to total income. In the case of foreign-sourced income of a partnership, the tax credit is available to members of the partnership.

Some partnerships may have foreign-sourced income that is “non-portfolio earnings” (as that term is defined in new subsection 197(1) of the Act) that are taxable under Part IX.1 of the Act. For the purpose of the application of the Act to the members of the partnership, the amount of partnership non-portfolio earnings that is allocable to partners is reduced by the amount of Part IX.1 tax payable, and the balance is deemed to be a dividend received by the partnership from a taxable Canadian corporation. For more information, refer to the commentary to subsection 96(1.11) of the Act and new section 197.

New subsection 126(8) is introduced to ensure that, for the purpose of calculating the credits available under section 126, the full amount of the taxable dividend applicable to that foreign-sourced income that is non-portfolio earnings (“grossed-up” by subsection 82(1), if applicable) is included in the foreign tax credit calculation. In addition, the dividend is clarified as being from a foreign source, notwithstanding paragraph 96(1.11)(b), to the extent that the non-portfolio earnings are from a foreign source.

The amendment is deemed to have come into force on October 31, 2006. As a practical matter, it will have effect no earlier than the 2007 taxation year, since the new defined term “SIFT partnership” applies, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT partnership” in subsection 197(1).

Clause 16**Mutual fund trust**

ITA

132(7)(a)

Subsection 132(7) of the Act provides that a trust is not a mutual fund trust if it was established or is maintained primarily for the benefit of non-resident persons. An exception to this rule, in paragraph 132(7)(a), allows a mutual fund trust to be established and/or maintained for non-residents if all or substantially all of its property consists of property that is not “taxable Canadian property” (TCP). In its current form, this test in respect of the trust’s property must be met at all times after the later of February 21, 1990 and the date on which the trust was created. This may have the effect of causing a trust to be disqualified from the exception if it ever held any TCP – even if it did so at a time when it was not maintained primarily for the benefit of non-residents, or even at a time when it had no non-resident investors whatsoever.

To better co-ordinate the different elements of the provision, paragraph 132(7)(a) is amended to test a trust’s entitlement to the exception in that paragraph only at the time when it is operated for the benefit of non-resident persons. This amendment applies after 2003.

Clause 17

Registered retirement savings plans

ITA

146

Section 146 of the Act provides rules relating to registered retirement savings plans (RRSPs).

Definitions

ITA

146(1)

“qualified investment”

The definition “qualified investment” in subsection 146(1) of the Act sets out the types of property that a trust governed by an RRSP is permitted to hold.

Paragraph (a) of the definition includes most of the investments described by the definition “qualified investment” in section 204 of the Act (which sets out the types of property that a trust governed by a deferred profit sharing plan is permitted to hold). Paragraph (b) of the definition “qualified investment” in subsection 146(1) includes debt obligations issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or issued by an authorized foreign bank and payable at a branch in Canada of that bank.

Paragraph (a) of the definition “qualified investment” in subsection 146(1) is amended to take into account amendments to the definition “qualified investment” in section 204, which expand and reorganize the list of investments described by that latter definition. As the debt obligations described by paragraph (b) of the definition “qualified investment” in subsection 146(1) are now included under amended paragraph (a) of that definition (i.e., by reference to section 204), paragraph (b) of that definition has become redundant and is repealed. For details on the new types of property covered in the amended definition “qualified investment” in section 204, refer to the commentary on that section. These amendments apply in determining qualified investment status at any time after March 18, 2007.

Paragraph (c.2) of the definition in subsection 146(1) allows an annuity contract to qualify as an investment for an RRSP trust, provided that the annuity meets certain conditions. One of the conditions is that the contract provide for payment of the annuity to begin no later than the end of the year in which the RRSP annuitant turns 70 years of age.

Paragraph (c.2) is amended to defer the deadline by which payment of the annuity must begin to the end of the year in which the RRSP annuitant turns 72 years of age. This amendment, which applies after 2006, is consequential to the amendment to paragraph 146(2)(b.4) that defers the deadline for the maturity of an RRSP.

Conditions for registration

ITA

146(2)(b.4)

Subsection 146(2) of the Act sets out a number of requirements that must be satisfied in order for a retirement savings plan to qualify for registration. Paragraph 146(2)(b.4) requires that an RRSP not provide for maturity after the year in which the annuitant turns 69 years of age.

Paragraph 146(2)(b.4) is amended to defer the deadline by which an RRSP must provide for maturity to the end of the year in which the RRSP annuitant turns 71 years of age. This amendment applies after 2006.

Maturity after age 69

ITA

146(13.2) and (13.3)

Paragraph 146(2)(b.4) of the Act was previously amended, effective after 1996, to advance the deadline by which an RRSP must provide for maturity from the end of the year in which the annuitant turns 71 years of age to the end of the year in which the annuitant turns 69 years of age. Subsections 146(13.2) and (13.3) were introduced, in conjunction with that amendment, to deal with RRSPs that were registered before 1997 and not subsequently amended to reflect the earlier maturity requirements. If such an RRSP does not mature by the end of the year in which the annuitant turns 69 years of age, subsection 146(13.2) provides, in effect, for its deregistration immediately after the end of that year. Subsection 146(13.3) requires the issuer of an RRSP that may become deregistered because of subsection 146(13.2) to so advise the RRSP annuitant.

Subsections 146(13.2) and (13.3) have become obsolete as a result of the amendment to paragraph 146(2)(b.4) to defer the deadline for the maturity of an RRSP. Consequently, these subsections are repealed for RRSPs under which the annuitant was, at the end of 2006, under 69 years of age.

Clause 18**Registered education savings plans**

ITA

146.1

Section 146.1 of the Act provides rules relating to registered education savings plans (RESPs).

Definitions

ITA

146.1(1)

“specified educational program”

The definition “specified educational program” is introduced in conjunction with an amendment to paragraph 146.1(2)(g.1) of the Act that permits educational assistance payments to be made in connection with part-time studies. The definition is discussed in the commentary below on that paragraph.

“qualified investment”

The definition “qualified investment” in subsection 146.1(1) of the Act sets out the types of property that a trust governed by an RESP is permitted to hold.

Paragraph (a) of the definition includes most of the investments described by the definition “qualified investment” in section 204 of the Act (which sets out the types of property that a trust governed by a deferred profit sharing plan is permitted to hold). Paragraph (b) of the definition “qualified investment” in subsection 146.1(1) includes debt obligations issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or issued by an authorized foreign bank and payable at a branch in Canada of that bank.

Paragraph (a) of the definition “qualified investment” in subsection 146.1(1) is amended to take into account amendments to the definition “qualified investment” in section 204, which expand and reorganize the list of investments described by that latter definition. As the debt obligations described by paragraph (b) of the definition “qualified investment” in subsection 146.1(1) are now included under amended paragraph (a) of that definition (i.e., by reference to section 204), paragraph (b) of that definition has become redundant and is repealed. For details on the new types of property covered in the amended definition “qualified investment” in section 204, refer to the commentary on that section. These amendments apply in determining qualified investment status at any time after March 18, 2007.

“RESP annual limit”

Subsection 146.1(1) of the Act defines “RESP annual limit”. The RESP annual limit, which is currently \$4,000, represents the maximum annual amount that can be contributed to RESPs in respect of a beneficiary. The definition is used in paragraph 146.1(2)(k) and Part X.4 of the Act.

The definition is repealed as a consequence of amendments to paragraph 146.1(2)(k) and Part X.4 of the Act that eliminate the annual limit on RESP contributions. This amendment applies to contributions made after 2006.

Conditions for registration

ITA

146.1(2)

Subsection 146.1(2) of the Act sets out a number of requirements that must be satisfied in order for an education savings plan to qualify for registration.

ITA

146.1(2)(g.1)

Under paragraph 146(2)(g.1) of the Act, an RESP is permitted to make an educational assistance payment (EAP) to an individual under an RESP only where the individual is enrolled in a qualifying educational program as a full- or part-time student at a post-secondary educational institution. To qualify as a “qualifying educational program” under subsection 146.1(1), a program must satisfy several conditions including a requirement that it involve at least 10 hours per week on courses or work in the program. This requirement effectively limits eligibility to receive EAPs to full-time students and to part-time students with a heavy course load.

Paragraph 146.1(2)(g.1) is amended to relax the EAP eligibility requirement to accommodate certain qualifying part-time programs. The relaxed eligibility requirements are generally consistent with those that apply for purposes of the part-time education tax credit.

Specifically, paragraph 146.1(2)(g.1) is amended to permit an RESP to make an EAP to an individual who is enrolled as a student in a “specified educational program” at a post-secondary educational institution provided two conditions are met. First, the individual must be at least 16 years of age at the time of the payment. Second, the total amount of EAPs made to the individual under the RESP (and other RESPs of the same promoter) in the preceding 13-week period cannot exceed \$2,500. While Human Resources and Social Development Canada (HRSDC) may approve a greater amount of EAPs on a case-by-case basis, it is expected that HRSDC would do so only in exceptional cases, such as where the cost of tuition for a particular program is substantially higher than average. Subsection 146.1(1) defines a “specified educational program” as a program at a post-secondary school level that is at least 3 weeks duration and that involves at least 12 hours of courses per month.

Paragraph 146.1(2)(g.1) is also amended to eliminate the special provision in existing clause (i)(B) for disabled part-time students. This provision became redundant in 2004 when the words “part-time” were added to clause 146(2)(g.1)(i)(A). Paragraph 146.1(2)(g.1) is amended to replace the words “full-time or part-time student” in clause 146(2)(g.1)(i)(A) with the word “student”. Neither of these amendments represent a change in policy.

These amendments apply to the 2007 and subsequent taxation years.

ITA

146.1(2)(k)

Paragraph 146.1(2)(k) of the Act requires that an RESP not accept contributions in respect of a beneficiary that exceed the RESP annual limit.

Paragraph 146.1(2)(k) is repealed, effective for contributions made after 2006. Although there is no longer an annual limit, such contributions continue to be subject to a lifetime limit, as set out in Part X.4 of the Act.

Clause 19

Registered retirement income funds - definitions

ITA

146.3(1)

Subsection 146.3(1) of the Act defines a number of terms for the purposes of the rules governing registered retirement income funds (RRIFs) in section 146.3.

“minimum amount” and “retirement income fund”

A “retirement income fund” is defined as an arrangement between a carrier and an annuitant under which the carrier undertakes to pay to the annuitant (and to the annuitant’s spouse or common-law partner after the annuitant’s death, if the annuitant so elects) at least the “minimum amount” each year (other than the year in which the fund is established). In general, “minimum amount” for a year is defined as the fair market value of the fund’s assets at the beginning of the year multiplied by an age-related factor determined in accordance with section 7308 of the *Income Tax Regulations*.

The definition “minimum amount” is amended to set the minimum amount to nil for the year in which the fund is entered into. Consequential amendments are made to the definition “retirement income fund” so that the carrier is required to undertake to make payments only in those years for which the “minimum amount” is greater than nil.

Special provisions apply for RRIF annuitants turning 70 or 71 years of age in 2007. Specifically, the minimum amount that these annuitants must withdraw from their RRIFs in 2007 is set to nil. For those turning 70 years of age in 2007, the minimum amount for 2008 is also set to nil. However, to ensure that the existing preferential treatment for the portion of a RRIF withdrawal relating to the minimum amount continues to be available to these annuitants in the event that withdrawals are made, the law will apply for certain purposes as though the minimum amount were the amount that would otherwise have been determined (i.e., if it were not set to nil). This will be the case for the exemption from withholding tax, the spousal income attribution rules and to a registered retirement savings plan) any RRIF withdrawals made in 2007 (and in 2008, if the annuitant turns 71 years of age in that year), up to the minimum amount that would otherwise have been determined for that year, and to claim an offsetting deduction.

These amendments take effect after 2006.

“qualified investment”

The definition “qualified investment” in subsection 146.3(1) of the Act sets out the types of property that a trust governed by an RRIF is permitted to hold.

Paragraph (a) of the definition includes most of the investments described by the definition “qualified investment” in section 204 of the Act (which sets out the types of property that a trust governed by a deferred profit sharing plan is permitted to hold). Paragraph (b) of the definition “qualified investment” in subsection 146.3(1) includes debt obligations issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or issued by an authorized foreign bank and payable at a branch in Canada of that bank.

Paragraph (a) of the definition in subsection 146.3(1) is amended to take into account amendments to the definition “qualified investment” in section 204, which expand and reorganize the list of investments described by that latter definition. As the debt obligations described by paragraph (b) of the definition “qualified investment” in subsection 146.3(1) are now included under amended paragraph (a) of that definition (i.e., by reference to section 204), paragraph (b) of that definition has become redundant and is repealed. For details on the new types of property covered in the amended definition “qualified investment” in section 204, refer to the commentary on that section. These amendments apply in determining qualified investment status at any time after March 18, 2007.

Clause 20

Deferred profit sharing plans

ITA

147

Section 147 of the Act provides rules governing deferred profit sharing plans (DPSPs).

Conditions of registration

ITA

147(2)(k)

Paragraph 147(2)(k) of the Act requires that a DPSP provide for amounts vested in an employee to become payable no later than the end of the year in which the employee turns 69 years of age (or, if earlier, 90 days after the earliest of the employee’s termination of employment or death or termination of the plan). It also allows a DPSP to provide for such amounts to be used to purchase an annuity for the employee commencing no later than the end of the year the employee turns 69 years of age.

Paragraph 147(2)(k) is amended to replace the references to “69 years of age” with references to “71 years of age”. This amendment applies after 2006.

Amended contract

ITA

147(10.5)

New subsection 147(10.5) of the Act provides a special rule to ensure that previously-acquired annuity contracts can be amended, without adverse tax consequences, to defer the deadline by which annuity payments must begin to the end of the year in which the annuitant turns 71 years of age. This amendment, which applies after 2006, is consequential to the amendment to paragraph 147(2)(k) that defers the deadline for the commencement of an annuity acquired with DPSP funds.

ITA

147(10.6)

Paragraph 147(2)(k) of the Act was amended, effective after 1996, to advance the deadline by which an annuity acquired under a DPSP for a beneficiary must become payable from the end of the year in which the beneficiary turns 71 years of age to the end of the year in which the beneficiary turns 69 years of age. Subsection 147(10.6) was introduced, in conjunction with the amendment to paragraph 147(2)(k), to deal with DPSP annuities acquired before 1997. If the payment of such an annuity does not begin by the end of the year in which the beneficiary turns 69 years of age, subsection 147(10.6) provides, in effect, for the fair market value of the annuity to be included in the beneficiary’s income and for the annuity to become subject to the accrual rules in section 12.2 of the Act.

Subsection 147(10.6) has become obsolete as a result of the amendment to paragraph 147(2)(k) to defer the annuity commencement deadline for DPSPs. Consequently, this subsection is repealed for annuities under which the annuitant was, at the end of 2006, under 69 years of age.

Clause 21

Registered pension plan annuity contract

ITA

147.4

Section 147.4 of the Act provides a set of rules that deal primarily with individuals acquiring ownership of annuity contracts in satisfaction of their entitlement to benefits under a registered pension plan (RPP).

Where an individual acquires ownership of an annuity in satisfaction of the individual's entitlement to benefits under an RPP and certain other conditions are met, subsection 147.4(1) deems the individual not to have received an amount from the RPP as a result of acquiring the annuity, and deems amounts received under the contract to be amounts received under the RPP. Subsection 147.4(1) replaced (for annuities acquired after July 30, 1997) the mechanism provided under paragraph 254(a) of the Act for individuals to acquire annuities under pension plans without adverse tax consequences.

ITA

147.4(2) and (4)

Where an annuity to which subsection 147.4(1) or paragraph 254(a) of the Act applies has, at any time after July 30, 1997, been amended in such a way that the rights provided for under the annuity contract are materially altered, subsection 147.4(2) provides, in effect, for the fair market value of the annuity to be included in the annuitant's income and for the annuity to become subject to the accrual rules in section 12.2 of the Act.

Where payments under an annuity to which paragraph 254(a) applies do not begin by the end of the year in which the annuitant turns 69 years of age, subsection 147.4(4) provides, in effect, for the fair market value of the annuity to be included in the annuitant's income and for the annuity to become subject to the accrual rules in section 12.2 of the Act. This subsection was introduced in conjunction with amendments made to the *Income Tax Regulations* that advanced, after 1996, the deadline for RPP pension payments to begin from the end of the year in which the member turns 71 years of age to the end of the year in which the member turns 69 years of age.

By virtue of paragraph 147.4(2)(a), an amendment to an annuity to which paragraph 254(a) applies to provide for the annuity to begin by the end of the year in which the individual turns 69 years of age, thereby avoiding the application of subsection 147.4(4), is exempt from the adverse tax consequences that would otherwise be imposed under subsection 147.4(2).

Several amendments are being made to section 147.4 that are consequential to amendments to the *Income Tax Regulations* to defer the deadline by which pension payments must commence under an RPP to the end of the year in which the member turns 71 years of age, effective after 2006.

Subsection 147.4(2) is amended to ensure that existing annuity contracts can be amended, without adverse tax consequences, to defer the deadline by which annuity payments must begin to the end of the year in which the annuitant turns 71 years of age.

Subsection 147.4(2) is also amended to eliminate the existing exception currently provided under paragraph 147.4(2)(a) for amendments to pre-1997 annuity contracts to provide for an earlier annuity commencement. Similarly, subsection 147.4(4) is repealed for individuals who turn 69 years of age after 2006. These provisions have become obsolete as a result of the deferral in the RPP commencement age.

These amendments generally apply after 2006.

Clause 22

Payment of tax

ITA

153

Section 153 of the Act requires the withholding of tax from certain payments described in paragraphs 153(1)(a) to (t). The person making such a payment is required to remit the amount withheld to the Receiver General on behalf of the payee.

Section 153 is amended by adding new subsections 153(1.3) and (2) as a consequence to the introduction of new section 60.03 of the Act relating to the splitting of eligible pension income between spouses and common-law partners. This subsection applies to the 2007 and subsequent taxation years.

Split-pension amount

ITA

153(1.3)

Subsection 153(1.1) of the Act gives the Minister of National Revenue the discretion to reduce the tax deducted or withheld under subsection 153(1) in cases where the Minister is satisfied that the amount required to be deducted or withheld from a payment under that subsection would cause undue hardship to a taxpayer. New subsection 153(1.3) provides that a joint election made or expected to be made under new section 60.03 of the Act is not a basis on which the Minister can exercise discretion under subsection 153(1.1) to reduce the tax deducted or withheld under subsection 153(1).

This subsection applies to the 2007 and subsequent taxation years.

Deemed withholding

ITA

153(2)

New subsection 153(2) of the Act provides that where a joint election is made in respect of a split-pension amount for a taxation year under new section 60.03 of the Act by a pensioner and a pension transferee, the portion of the tax deducted or withheld under subsection 153(1) that may reasonably be considered to be in respect of the split-pension amount, is considered to have been deducted or withheld on account of the pension transferee's tax for the taxation year under Part I and not on account of the pensioner's tax for the taxation year under that Part. Please refer to the commentary to the definitions of "pensioner", "pension transferee" and "split-pension amount" in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

Clause 23

Tax liability re property transferred not at arm's length

ITA

160

Section 160 of the Act contains rules regarding the liability of a taxpayer for the income tax liability of another person.

Section 160 is amended by adding new subsection 160(1.3) as a consequence of the introduction of new section 60.03 of the Act relating to the splitting of eligible pension income between spouses or common-law partners. Please refer to the commentary to the definition of "eligible pension income" in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

Joint liability – tax on split-pension income

ITA

160(1.3)

New subsection 160(1.3) provides that, where a joint election is made in respect of a split-pension amount for a taxation year under new section 60.03 of the Act by a pensioner and a pension transferee, they are jointly and severally, or solidarily, liable for the portion of the tax payable by the pension transferee under Part I because of the inclusion of the split-pension amount in the income of the pension transferee under paragraph 56(1)(a.2) of the Act. Please refer to the commentary to the definitions of “eligible pension income”, “pensioner”, “pension transferee” and “split-pension amount” in new subsection 60.03(1) for more information.

This subsection applies to the 2007 and subsequent taxation years.

Clause 24

Part IX.1 – Tax on SIFT partnerships

ITA

197

New section 197 of the Act imposes a tax on certain publicly-listed partnerships as if they were persons. The tax applies on income from certain property (referred to as “non-portfolio property”) and on income from carrying on business in Canada. The tax rate imposed under new Part IX.1 of the Act reflects, generally, the percentage that would be the federal corporate tax rate, less the federal abatement that would apply to a corporation subject to provincial tax, plus an amount that serves as a proxy for a provincial rate of tax.

Section 197 is introduced concurrently with new subsection 96(1.11) of the Act. Subsection 96(1.11) provides that Part IX.1 tax payable by a SIFT partnership reduces the amount of income that will be subject to tax in the hands of the members of the partnership under Part I of the Act. Subsection 96(1.11) also provides that the difference between the amount taxable under Part IX.1 and the tax payable is deemed to be a dividend received by the partnership from a taxable Canadian corporation. In the result, Canadian-resident individuals who are members of a SIFT partnership will generally be eligible to recover their share of the partnership’s Part IX.1 taxes as a dividend tax credit under section 121 of the Act. Corporate members may be eligible for a dividend deduction under section 112 of the Act. For additional information, refer to the commentary to accompanying subsection 96(1.11).

These amendments generally apply in respect of taxation years of a partnership that end after 2006.

In particular, the provisions in section 197 apply as of October 31, 2006, subject to the application of the definition of a SIFT partnership, which is modified by subsection 197(8) in respect of the 2007 to 2010 taxation years. For more information, refer to the commentary to that subsection.

Definitions

ITA

197(1)

New subsection 197 of the Act defines a number of terms that apply for the purposes of Part IX.1 of the Act.

“non-portfolio earnings”

A SIFT partnership’s “non-portfolio earnings” for a taxation year is the total of two amounts. The first amount, in paragraph (a) of the definition, is the total net amount of the SIFT partnership’s incomes for the year from businesses it carried on in Canada and from “non-portfolio properties”. Besides the netting of any losses for the taxation year from such sources, taxable dividends are excluded from this amount. The second amount, in paragraph (b) of the definition, is the net amount of the SIFT partnership’s taxable capital gains from dispositions in the taxation year of non-portfolio properties.

“SIFT partnership”

A “SIFT partnership”, being a specified flow-through investment partnership, for a taxation year means a Canadian resident partnership if, at any time in the taxation year, the partnership holds non-portfolio property and investments in it are listed or traded on a stock exchange or other public market. The term “investment” is defined by reference to subsection 122.1(1) of the Act, and in the case of a partnership includes, for instance, the interest of a member of the partnership. Refer to the commentary accompanying that section for more information.

Regarding the application of this definition for the 2007 to 2010 taxation years for a partnership that was, on October 31, 2006, a SIFT partnership under this definition, refer to the commentary to subsection 197(8) of the Act.

“taxable non-portfolio earnings”

The “taxable non-portfolio earnings” of a SIFT partnership for a taxation year is the lesser of

- (a) the amount that would, if the SIFT partnership were a taxpayer for the purposes of Part I of the Act, be its income for the taxation year as determined under section 3 of the Act, and
- (b) its non-portfolio earnings for the taxation year.

As such, if a SIFT partnership has a net loss from a source that is not non-portfolio property, that loss will generally reduce the amount that is subject to Part IX.1 tax to the extent that it exceeds income from other sources (i.e. sources that are not non-portfolio properties). An example of an exception would be an allowable capital loss, if the partnership has no taxable capital gains against which to offset that loss.

Furthermore, the calculation of the income limit of the partnership in paragraph (a) is computed without reference to paragraph 96(1)(d) of the Act. As such, for the purpose of calculating this limit, a SIFT partnership is permitted to claim deductions (and required to include amounts in income) under certain provisions of the Act applying to exploration, development and resource expenditures. Revenues and expenditures in taxation years prior to the partnership becoming a SIFT partnership are not relevant to this calculation. Also, this calculation has no effect on the application of those provisions to members of the partnership under Part I of the Act.

Tax on partnership income

ITA
197(2)

New subsection 197(2) of the Act provides a formula for calculating the Part IX.1 tax that is imposed on the taxable non-portfolio earnings of a SIFT partnership. The rate is the sum of the “net corporate income tax rate” for a taxation year and the “provincial SIFT tax factor”. For more information on these terms, refer to the commentary accompanying these new definitions in subsection 248(1) of the Act.

Ordering

ITA
197(3)

New subsection 197(3) of the Act provides that Part IX.1 and section 122.1 of the Act are to be read without reference to subsection 96(1.11) of the Act. Subsection 96(1.11) provides that Part IX.1 tax payable by a SIFT partnership reduces the amount of income that will be subject to tax in the hands of the members of the partnership under Part I of the Act. Subsection 96(1.1) also provides that the difference between the amount taxable under Part IX.1 and the tax payable is deemed to be a dividend received by the partnership from a taxable Canadian corporation.

New subsection 197(3) ensures that the calculation of non-portfolio earnings and, correspondingly, Part IX.1 tax, is unaffected by subsection 96(1.11).

Partnership to file return

ITA

197(4) and (5)

New subsection 197(4) of the Act provides that, for taxation years in which Part IX.1 tax is payable by a SIFT partnership, every person who was a member of the partnership in that year is responsible for the filing of the Part IX.1 return. However, if a member of the partnership who has authority to act for the partnership files the required return, subsection 197(5) of the Act provides that only that return need be filed.

The Part IX.1 return is required to be filed on or before the deadline for which the partnership information return is required to be filed for the year under section 229 of the *Income Tax Regulations*.

Provisions applicable to Part

ITA

197(6)

New subsection 197(6) of the Act provides that certain provisions of Part I of the Act applicable to individuals and relating to assessments, payments and appeals are applicable to Part IX.1 tax with any modifications that the circumstances require. Paragraph 197(6)(a) provides that a notice of assessment of tax payable under Part IX.1 is deemed to be valid notwithstanding that a partnership is not a person. In addition, paragraph 197(6)(a) provides that the prohibition of reassessment after the normal reassessment period of a member of a SIFT partnership is suspended in order to give effect to a determination made in respect of a partnership under subsection 152(1.4) of the Act.

Payment

ITA

197(7)

New subsection 197(7) of the Act provides that the tax payable by a SIFT partnership under Part IX.1 of the Act shall be paid on or before the “SIFT partnership balance-due day”, which is defined in subsection 248(1) of the Act as, generally, the day on which the partnership information return is required to be filed for the year under section 229 of the *Income Tax Regulations*.

Application of definition “SIFT partnership”

ITA

197(8)

New subsection 197(8) of the Act provides a rule for the application of the definition “SIFT partnership” in subsection 197(1) to the 2007 to 2010 taxation years. Generally, a partnership that was not a SIFT partnership on October 31, 2006, under the definition in subsection 197(1), will become a SIFT partnership only for the taxation year in which it first becomes a SIFT partnership under that definition. However, where a partnership would, under the text of that definition, be a SIFT partnership on October 31, 2006, subsection 197(8) provides that the SIFT partnership definition will not, nevertheless, apply until the partnership’s 2011 taxation year, unless and until the taxation year in which the partnership exceeds the normal growth guidelines issued by the Department of Finance on December 15, 2006.

New subsection 197(8) comes into force on October 31, 2006.

Clause 25

Taxes on deferred profit sharing plans and revoked plans

ITA

Part X

While a trust governed by a deferred profit sharing plan (DPSP) is generally exempt from tax, a special tax under Part X of the Act applies where a DPSP trust acquires a non-qualified investment.

Special rules relating to life insurance policies

ITA

198(6)

Subsection 198(6) of the Act deems the acquisition of a life insurance policy by a trust governed by a DPSP not to be the acquisition of a non-qualified investment (and thus not to be subject to the taxes imposed on non-qualified investments) where certain conditions are satisfied. One of the conditions is that the cash surrender value of the policy be at least equal to the maximum amount payable by the insurer under the policy by the time the insured person turns 69 years of age. Subsection 198(6) also applies, by virtue of subsections 146(11) and (11.1) of the Act, to policies issued before 1997 that are acquired by trusts governed by registered retirement savings plans (RRSPs).

Subsection 198(6) is amended so that the condition relating to the cash surrender value of a policy need not be satisfied until the end of the year in which the insured person turns 71 years of age. This amendment, which applies after 2006, is consequential to the amendments to paragraphs 146(2)(b.4) and 147(2)(k) of the Act that defer the deadline for the maturity of an RRSP and for the commencement of an annuity acquired with DPSP funds.

Clause 26

DPSP qualified investments

ITA

204

Section 204 of the Act defines a number of terms that apply for purposes of Part X.

“debt obligation” and “excluded property”

Section 204 is amended to add the definitions “debt obligation” and “excluded property”. The definitions are used in the definition “qualified investment” and are discussed in the commentary below.

“qualified investment”

The definition “qualified investment” in section 204 of the Act sets out the types of property that a trust governed by a DPSP is permitted to hold. The definition is also relevant for RRSPs, RESPs and RRIFs, as the definitions “qualified investment” in each of subsections 146(1), 146.1(1) and 146.3(1) largely adopt the list of investments described by the definition in section 204.

The definition “qualified investment” in section 204 is amended to expand and reorganize the list of investments.

Debt of listed entities

Existing paragraph (c) of the definition includes a debt obligation issued by a corporation the shares of which are listed on a prescribed stock exchange in Canada, or issued by an authorized foreign bank and payable at a branch in Canada of that bank.

Paragraph (c) is amended to consolidate, under a single provision, the existing provisions for debt obligations issued by listed entities. This consolidation is consequential to the amendments described below. Specifically, paragraph (c) is expanded to include a debt obligation issued by a mutual fund trust or limited partnership whose units are listed on a prescribed stock exchange in Canada, and a debt obligation issued by a corporation whose shares are listed on a prescribed stock exchange outside Canada. These debt obligations are currently qualified investments under paragraphs 4900(1)(d.1), (n.01) and (p) of the *Income Tax Regulations*, respectively. As a consequence, those provisions of the Regulations are repealed.

Investment-grade debt

New paragraph (c.1) of the definition includes a debt obligation that has, at the time of acquisition, an investment grade rating with a prescribed credit rating agency and that is part of a minimum \$25 million issuance.

An investment grade rating is generally considered to be BBB or higher. For the list of prescribed credit rating agencies, refer to the commentary below on subsection 4900(2). In the case of debt obligations that are issued on a continuous basis (such as commercial paper), the \$25 million issuance requirement can be satisfied by having regard to all of the issuer's outstanding debt obligations of that type.

New paragraph (c.1) will, in particular, remove impediments to investing in Canadian dollar bonds issued by foreign entities, commonly referred to as Maple Bonds. While many of these bond issues qualified under existing provisions, those issued by quasi-government agencies, subnational governments and non-listed entities did not.

Listed securities

Existing paragraph (d) of the definition refers to a share that is listed on a prescribed stock exchange in Canada. Paragraph (d) is amended to refer to any security (other than a futures contract or similar derivative instrument) that is listed on a prescribed stock exchange in Canada or outside Canada.

This amendment expands the types of qualifying listed securities to include, for example, listed units of foreign real estate investment trusts, foreign partnerships and foreign gold and silver exchange traded funds.

The amendment also consolidates, under a single provision, the existing provisions for listed securities. As a consequence, the following provisions are repealed:

- paragraph (h) of the definition “qualified investment” in section 204 of the Act (shares listed on a prescribed stock exchange outside Canada);
- paragraph 4900(1)(e.01) of the Regulations (options or warrants listed on a prescribed stock exchange in Canada or outside Canada);
- paragraph 4900(1)(m) of the Regulations (royalty units listed on a prescribed stock exchange in Canada);
- paragraph 4900(1)(n) of the Regulations (limited partnership units listed on a prescribed stock exchange in Canada);
- paragraph 4900(1)(n.1) of the Regulations (index trust units listed on a prescribed stock exchange outside Canada); and
- paragraph 4900(1)(p.1) of the Regulations (depository receipts listed on a prescribed stock exchange in Canada or outside Canada).

Other amendments

The definition “qualified investment” in section 204 is also amended to exclude any property that is “excluded property”. Section 204 defines “excluded property” in relation to a DPSP trust as a bond, debenture, note, bankers’ acceptance or similar obligation that is issued by an employer who makes payments under the plan (or by a corporation with which that employer does not deal at arm’s length). This general provision replaces the specific provisions in existing paragraph (c) of the definition “qualified investment” and in subsection 4900(2) that served to exclude such property from being treated as a qualified investment for a DPSP trust. This amendment, which is consequential to the amendments that expand the types of qualifying debt obligations, does not represent a change in policy.

Paragraphs (b) and (c) of the definition “qualified investment” are amended to replace the references to “bonds, debentures, notes or similar obligations” with references to “debt obligations”. Section 204 defines a “debt obligation” as a bond, debenture, note or similar obligation. These amendments are intended to improve readability and do not represent a change in policy. In this regard, it should be noted that the words mortgages and hypothecary claims in existing paragraph (b) have not been incorporated in the new definition “debt obligation”. As a debt obligation described by that paragraph that is secured by a mortgage or hypothec is considered to be similar to a bond, debenture or note, it is unnecessary to make specific reference to such property.

Finally, paragraph (i) of the definition, which includes investments that are prescribed by regulation, is renumbered as paragraph (h).

Coming-into-force

These amendments apply in determining qualified investment status at any time after March 18, 2007.

Prescribed stock exchanges

Budget 2007 proposes to update the process for recognizing stock exchanges for purposes of the Act. As part of this proposal, the Act will be amended to replace most references to “prescribed stock exchange”, including those references in the definition “qualified investment” in section 204, with references to “designated stock exchange”. These amendments will be introduced as part of the second bill to implement the remaining measures proposed in Budget 2007. For further details, refer to Annex 5 of the 2007 Budget Plan.

Clause 27

Tax in respect of overpayments to RESPs

ITA

Part X.4

Part X.4 of the Act provides for a special tax to be paid by individuals with respect to overpayments made to registered education savings plans (RESPs). The purpose of this tax is to limit the amount of tax-deferred income that may be accumulated for any one beneficiary.

ITA

204.9(1)

Subsection 204.9(1) of the Act defines terms that apply for purposes of Part X.4.

“excess amount” and “RESP lifetime limit”

An “excess amount” for a year in respect of an individual who is a beneficiary under one or more RESPs is the amount on which tax is payable under Part X.4 of the Act in respect of contributions made to those RESPs in that year for the individual. An excess amount arises when the total of all such contributions either exceeds the “RESP annual limit” for the year, or causes the “RESP lifetime limit” for the year to be exceeded. (For 2006, these limits were \$4,000 and \$42,000, respectively.)

The definition “excess amount” is amended to provide that, for years after 2006, an excess amount will arise only where the RESP lifetime limit is exceeded. This amendment, in conjunction with the repeal of paragraph 146.1(2)(k) of the Act, eliminates the annual limit on RESP contributions.

The definition “RESP lifetime limit” is amended to increase that limit to \$50,000 for 2007 and subsequent years.

These amendments apply for the purpose of determining tax under Part X.4 for months that are after 2006.

Clause 28

Definitions

ITA

248(1)

Subsection 248(1) of the Act defines many terms for the purposes of the Act. This subsection is amended by adding, in alphabetical order, several definitions that relate to the taxation of “SIFT trusts” and “SIFT partnerships”.

“Canadian real, immovable or resource property”

A “Canadian real, immovable or resource property” is defined to mean four types of properties and any right to or interest in them. The four types of properties are:

- (a) a real or immovable property situated in Canada,
- (b) a Canadian resource property,
- (c) a timber resource property, and
- (d) a share of a corporation, an interest in a trust, or an interest in a partnership, if more than 50% of the fair market value of the share or interest is derived from one or any combination of properties described in (a) to (c) above.

“Canadian resident partnership”

The definition “Canadian resident partnership” is introduced consequential to the rules regarding SIFT partnerships. A Canadian resident partnership is a partnership that

- (a) is a Canadian partnership (defined in subsection 248(1) and in section 102 of the Act as, generally, a partnership all of the members of which are resident in Canada),
- (b) would, if it were a corporation, be resident in Canada (including, for greater certainty, a partnership that has its central management and control in Canada, or
- (c) was formed under the laws of a province.

“net corporate income tax rate”

This definition is introduced as part of a series of amendments implementing new rules for “SIFT partnerships” and “SIFT trusts”. This rate, in effect, is the general corporate tax rate less the rate reduction applicable for a corporation for the taxation year less the “provincial abatement”. This definition is used in calculating the tax payable on the non-portfolio earnings of a SIFT trust or the taxable non-portfolio earnings of a SIFT partnership.

“non-portfolio property”

The expression “non-portfolio property” has the same meaning as in subsection 122.1(1) of the Act. Refer to the commentary to that subsection for more information.

“provincial SIFT tax factor”

The “provincial SIFT tax factor” means the decimal fraction 0.13 and is used in calculating the tax payable on the non-portfolio earnings of a SIFT trust or the taxable non-portfolio earnings of a SIFT partnership.

“public market”

The expression “public market” has the same meaning as in subsection 122.1(1) of the Act. Refer to the commentary to that subsection for more information.

“SIFT partnership”

The definition “SIFT partnership” has the meaning assigned by Part IX.1 of the Act. Refer to the commentary to that Part for more information.

“SIFT partnership balance-due day”

The definition “SIFT partnership balance-due day” is introduced consequential to the rules regarding SIFT partnerships. The expression refers to the day on or before which the partnership is required to file an information return for a taxation year under section 229 of the *Income Tax Regulations*.

“SIFT trust”

The definition “SIFT trust” has the same meaning as in section 122.1. Refer to the commentary to that section for more information.

The definitions are deemed to have come into force on October 31, 2006. As a practical matter, they will have effect no earlier than the 2007 taxation year, since the new defined terms “SIFT partnership” and “SIFT trust” apply, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT partnership” in subsection 197(1) of the Act, the definition “SIFT trust” in subsection 122.1(1) of the Act, and the application rules in subsections 122.1(2) and 197(8).

Clause 29**Definition of “taxation year”**

ITA
249(1)

Subsection 249(1) of the Act defines “taxation year” in the case of a corporation or an individual. Subsection 249(1) is amended, in conjunction with the introduction of Part IX.1 of the Act in respect of SIFT partnerships, to provide that the taxation year of a Canadian resident partnership is its fiscal period.

The amended definition is deemed to have come into force on October 31, 2006. As a practical matter, the definition and Part IX.1 of the Act will have effect no earlier than the 2007 taxation year, since the new defined term “SIFT partnership” applies, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT partnership” in subsection 197(1) of the Act.

Income Tax Regulations

Clause 30

Partnership return

ITR

229(1)

Subsection 229(1) of the *Income Tax Regulations* (the Regulations) requires every member of a partnership that, at any time in its fiscal period, carries on business in Canada or is a Canadian partnership, to make an information return in prescribed form. Subsection 229(2) allows that such a return filed by one member is deemed to have been filed by all members.

Subsection 229(1) is amended concurrently with the introduction of the tax payable by a SIFT partnership under Part IX.1 of the Act, to require the filing of an information return in respect of a SIFT partnership. For more information, refer to the commentary to new subsection 96(1.11) and new section 197 of the Act.

The amendment is deemed to have come into force on October 31, 2006. As a practical matter, it will have effect no earlier than the 2007 taxation year, since the new defined term “SIFT partnership” applies, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT partnership” in subsection 197(1) of the Act.

Clause 31

SIFT trusts

ITR

2608

Part XXVI of the Regulations sets out rules for computing an individual’s income earned in a taxation year in a particular province. Trusts are individuals for income tax purposes.

As part of a series of amendments implementing new rules for “SIFT trusts”, this section is added to exclude the taxable SIFT trust distributions of a SIFT trust from the computation of its income earned in particular province in a taxation year as the taxable SIFT trust distributions are taxed at a combined federal and provincial rate under the amended section 122.

The amendment is deemed to have come into force on October 31, 2006. As a practical matter, it will have effect no earlier than the 2007 taxation year, since the new defined term “SIFT trust” applies, at the earliest, to taxation years that end after 2006. For more information, refer to the commentary to the definition “SIFT trust” in subsection 122.1(1) of the Act and the application rule in subsection 122.1(2).

Clause 32

Qualified investments

ITR

4900(1)

Subsection 4900(1) of the Regulations prescribes a number of investments to be qualified investments for a trust governed by a registered retirement savings plan, registered education savings plan, registered retirement income fund or deferred profit sharing plan (DPSP).

Subsection 4900(1) is amended as a consequence of amendments to the definition “qualified investment” in section 204 of the Act. Since the types of property described by paragraphs 4900(1)(d.1), (e.01), (m) to (n.1), (p) and (p.1) are now described by the amended definition in section 204, those paragraphs have become redundant and are repealed.

Subsection 4900(1) is also amended to eliminate the reference to subsection (2). That cross-reference is no longer necessary as subsection 4900(2) has been replaced by an unrelated provision. For details, refer to the commentary below. Subsection 4900(1) is also amended to update a cross-reference to the definition “qualified investment” in section 204 to reflect a renumbering of that definition.

These amendments apply in determining qualified investment status at any time after March 18, 2007.

ITR

4900(2)

Subsection 4900(2) of the Regulations provides that, for the purposes of section 4900, a note, bond, debenture, bankers’ acceptance or similar obligation is not a qualified investment for a DPSP trust if the obligation is issued by an employer who makes payments under the plan (or by a corporation with which that employer does not deal at arm's length).

As a consequence of amendments to section 204 of the Act to add a general provision to exclude such obligations from being treated as a qualified investment for a DPSP trust, subsection 4900(2) has become redundant. It is replaced by another provision relating to investment grade debt.

New paragraph (*c.1*) of the definition “qualified investment” in section 204 of the Act includes certain debt obligations that have an investment grade rating with a prescribed credit rating agency. Amended subsection 4900(2) prescribes the following organizations for this purpose: A.M. Best Company, Inc.; Dominion Bond Rating Service Limited; Fitch, Inc.; Moody's Investors Service, Inc.; and the Standard and Poor's Division of the McGraw-Hill Companies, Inc.

These amendments generally apply after March 18, 2007.

ITR

4900(3)

Subsection 4900(3) of the Regulations provides that a contract for an annuity purchased from a licensed annuities provider is a qualified investment for a DPSP trust if certain conditions are satisfied. One of the conditions is that the contract provide for payment of the annuity to begin no later than the end of the year in which the annuitant turns 69 years of age.

Subsection 4900(3) is amended to defer the deadline by which payment of the annuity must begin to the end of the year in which the annuitant turns 71 years of age. This amendment, which applies after 2006, is consequential to the amendment to paragraph 147(2)(k) of the Act that defers the deadline for the commencement of an annuity acquired with DPSP funds. Subsection 4900(3) is also amended to update a cross-reference to the definition “qualified investment” in section 204 of the Act to reflect a renumbering of that definition.

ITR

4900(7)

Subsection 4900(7) of the Regulations provides that certain types of small business investments are qualified investments for a trust governed by a DPSP. Subsection 4900(7) is amended to update a cross-reference to the definition “qualified investment” in section 204 of the Act to reflect a renumbering of that definition. This amendment generally applies after March 18, 2007.

Clause 33**Specified retirement arrangements**

ITR

8308.3(1)(c)

Section 8308.3 of the Regulations provides rules for calculating pension credits and past service pension adjustments in respect of certain unregistered retirement plans, referred to as “specified retirement arrangements” (SRAs), maintained by tax-exempt employers. Under subsection 8308.3(1), an SRA is generally an unregistered pension plan that is unfunded or only partially funded (other than certain excluded plans). Paragraph 8308.3(1)(c) excludes plans under which all payments will be made to the individual by the end of the year in which the individual turns 69 years of age (or later in the case of continued employment).

Paragraph 8308.3(1)(c) is amended to defer the deadline for making all payments under the plan to the end of the year in which the individual turns 71 years of age. This amendment, which applies after 2006, is consistent with the amendment to paragraph 8502(e) of the Regulations that defers the pension commencement deadline for registered pension plans (RPPs).

Clause 34**Conditions applicable to registered pension plans – payment of pension**

ITR

8502(e)

Section 8502 of the Regulations lists conditions that apply for the registration of a pension plan.

Paragraph 8502(e) generally requires an RPP to provide that retirement benefits will begin to be paid to each member generally no later than the end of the year in which the member turns 69 years of age (or, in the case of retirement benefits provided under a money purchase provision in accordance with paragraph 8506(1)(e.1), no later than the end of the year in which the member turns 70 years of age).

Paragraph 8502(e) is amended to defer the deadline by which an RPP must provide for payment of retirement benefits to begin to the end of the year in which the member turns 71 years of age (or, in the case of retirement benefits described by paragraph 8506(1)(e.1), to the end of the year in which the member turns 72 years of age).

This amendment applies after 2006.

Clause 35**Permissible benefits for defined benefit RPPs**

ITR

8503

Section 8503 of the Regulations describes the benefits that may be provided under a defined benefit provision of an RPP and contains conditions that apply to a plan that has a defined benefit provision.

Pre-retirement survivor benefits

ITR

8503(2)(f)

Paragraph 8503(2)(f) of the Regulations permits an RPP to provide pre-retirement survivor benefits under a defined benefit provision of the plan to a beneficiary who is a spouse or common-law partner or former spouse or common-law partner of the member. Generally, the benefits must begin to be paid by the end of the year in which the beneficiary turns 69 years of age.

Paragraph 8503(2)(f) is amended to defer the deadline by which survivor benefits must begin to be paid to the end of the year in which the beneficiary turns 71 years of age. This amendment, which applies after 2006, is consequential to the amendment to paragraph 8502(e) of the Regulations that defers the pension commencement deadline for RPPs.

Special rules for members aged 70 or 71 in 2007

ITR

8503(11.1)

New subsection 8503(11.1) of the Regulations contains transitional rules that are consequential to amendments to paragraph 8502(e) of the Regulations.

Existing paragraph 8502(e) generally requires that a member's pension under an RPP commence to be paid no later than the end of the year in which the member turns 69 years of age. This paragraph is being amended to defer the deadline for pension commencement to the end of the year in which the RPP member turns 71 years of age.

Existing paragraph 8503(3)(b) prohibits the continued accrual of benefits under a defined benefit provision of an RPP once a member's pension commences to be paid. This prevents those defined benefit RPP members who turned 69 years of age in 2005 or 2006, and began receiving their pensions in that year while continuing to be employed, from benefiting from the deferral of the pension commencement deadline.

New subsection 8503(11.1) ensures that an RPP can provide for such members to benefit from the deferral of the pension commencement deadline by allowing additional accruals to be accommodated under existing subsection 8503(9).

Subsection 8503(9) provides, among other things, that the prohibition in paragraph 8503(3)(b) does not apply to a defined benefit RPP member who becomes re-employed, if payment of the member's benefits is suspended during the period of re-employment. The application of subsection 8503(9) is qualified by subsections 8503(10) (which provides that subsection 8503(9) does not apply with respect to a member who commenced to receive benefits while employed) and by subsection 8503(11) (which provides an anti-avoidance rule to discourage re-employment for a short period for the purpose of benefiting from a benefit redetermination).

Subsection 8503(11.1) provides that, where payment of the member's benefits is suspended as of any time in 2007 (which time can be retroactive to the beginning of the year), subsections 8503(9) and (11) apply as though the member had become re-employed as of the time of suspension. This will allow accruals for employment from the time of suspension until the end of 2007 for members who turn 71 years of age in 2007, and until the end of 2008 for members who turn 71 years of age in 2008. To ensure that subsection 8503(10) does not override the application of subsection 8503(9) (which would be the case where the suspension is effective after pension commencement), subsection 8503(11.1) provides that any retirement benefits paid to the member before the time of suspension are to be disregarded in applying subsection 8503(10).

This amendment applies after 2006.

Clause 36

Money purchase RPPs

ITR

8506

Section 8506 of the Regulations describes the benefits that may be provided under a money purchase provision of an RPP and contains conditions that apply to a plan that has a money purchase provision.

Pre-retirement survivor benefits

ITR

8506(1)(e)

Paragraph 8506(1)(e) of the Regulations permits an RPP to provide pre-retirement survivor benefits under a money purchase provision of the plan to a beneficiary who is a spouse or common-law partner or former spouse or common-law partner of the member. Generally, the benefits must begin to be paid by the end of the year in which the beneficiary turns 69 years of age.

Paragraph 8506(1)(e) is amended to defer the deadline by which the survivor benefits must begin to be paid to the end of the year in which the beneficiary turns 71 years of age. This amendment, which applies after 2006, is consequential to the amendment to paragraph 8502(e) of the Regulations that defers the pension commencement deadline for RPPs.

Contributions not permitted

ITR

8506(2)(c.1)

Paragraph 8506(2)(c.1) of the Regulations generally prohibits a contribution or transfer to a money purchase provision of an RPP on behalf of a member at any time after the year in which the member turned 69 years of age.

Paragraph 8506(2)(c.1) is amended to replace the reference to “69 years of age” with a reference to “71 years of age”. This amendment, which applies after 2006, is consequential to the amendment to paragraph 8502(e) that defers the pension commencement deadline for RPPs.

When minimum amount is nil

ITR

8506(7)

Paragraph 8506(1)(e.1) of the Regulations permits an RPP to provide retirement benefits (referred to as “variable benefits”) to a member under a money purchase provision, and to beneficiaries of the member after the member's death, by means of payments from the member's account. The amount of variable benefits payable each year from the member's account must not be less than the minimum amount determined in accordance with rules set out in subsections 8506(5) to (7). These rules are similar to the minimum withdrawal rules for registered retirement income funds (RRIFs).

To provide consistency with the maximum deferral permitted under registered retirement savings plans (RRSPs) and RRIFs, subsection 8506(7) provides that the minimum amount for a member's money purchase account for years before the year in which the member turns 70 years of age is nil. Similar treatment is provided with respect to the specified beneficiary of a deceased member.

Subsection 8506(7) is amended to provide that the minimum amount for a member's money purchase account for years before the year in which the member or specified beneficiary turns 72 years of age is nil. This amendment, which applies after 2006, is consequential to amendments to paragraph 8502(e) of the Regulations and paragraph 146(2)(b.4) of the Act that defer the pension commencement deadline for RPPs and the maturity deadline for RRSPs.

Canada Education Savings Act

Clause 37

Amount of grant

CESA

5(2)

Subsection 5(2) of the *Canada Education Savings Act* provides for a 20 per cent Canada Education Savings Grant (CESG) to be paid on contributions made to a registered education savings plan (RESP) in respect of a beneficiary (up to and including the year in which the beneficiary turns 17 years of age). Paragraph 5(2)(b) limits the total amount of CESGs payable for a year in respect of a beneficiary to the lesser of \$800 and the beneficiary's unused CESG room for the year (as determined under subsection 5(3)).

Paragraph 5(2)(b) is amended to increase the dollar limit on the maximum annual CESG to \$1,000 from \$800. This amendment, in conjunction with the amendment to subsection 5(3), has the effect of increasing the maximum annual RESP contribution qualifying for the 20 per cent CESG to \$2,500 from \$2,000 (and to \$5,000 from \$4,000 if there is unused CESG room).

This amendment is effective for contributions made to RESPs after 2006.

Unused CES grant room

CESA

5(3)

Subsection 5(3) of the Act defines the unused CESG room for a beneficiary for a particular year. The definition is relevant in determining the maximum annual CESG payable for a year. In general, a beneficiary accumulates unused CESG room of \$400 per year, up to and including the year in which they turn 17 years of age. Unused CESG room is reduced by any CESG previously paid in respect of the beneficiary.

Subsection 5(3) is amended, effective in respect of years after 2006, to increase the rate at which unused CESG room accumulates to \$500 per year from \$400 per year.

Canada Education Savings Regulations

Clause 38

Conditions for payment of CES grants

CESR

4(1)(d)

Subsection 4(1) of the *Canada Education Savings Regulations* sets out a number of conditions that must be satisfied in order for the Minister of Human Resources and Social Development to pay a CESG on a contribution made to an RESP in respect of a beneficiary. Paragraph 4(1)(d) provides that no CESG is payable if the total of the contribution and all other contributions previously made to RESPs in respect of the beneficiary exceeds \$42,000. This amount represents that maximum amount of contributions that may be made to RESPs over a beneficiary's lifetime.

Paragraph 4(1)(d) is amended to replace the reference to "\$42,000" with a reference to "RESP lifetime limit (as defined in subsection 204.9(1) of the *Income Tax Act*) for the year in which the contribution is made". This amendment is consequential to an amendment to the *Income Tax Act* to increase the RESP lifetime limit to \$50,000 (from \$42,000) for the 2007 and subsequent years.

Clause 39 to Clause 42

Coordinating amendments

ITA

104(24), 106(1), 106(3) & 249(1)

Clauses 39 to 42 concern provisions of the *Income Tax Act* that are being amended by both the *Income Tax Amendments Act, 2006* and the *Budget Implementation Act, 2007*, which have been introduced in the 1st session of the 39th Parliament. The amendments contained in these clauses ensure that proper results are achieved with respect to provisions of the *Income Tax Act* being amended in both those amending Acts, irrespective of which Act comes into force first.

Part 2
Amendments to the Excise Tax Act
(Other than with Respect to the Goods and Services Tax/Harmonized Sales Tax)
Excise Tax Act

Clause 43

Payment where error and end-user refunds

ETA

Section 68 – Payment where error

Existing section 68 of the *Excise Tax Act* (the Act) allows, subject to certain conditions, a person to apply for a refund of any moneys that they have paid in error in respect of any goods, and that are taken into account as taxes, penalties, interest or other sums under the Act.

New subsection 68(1) replaces existing section 68 and includes updated wording in accordance with current legislative drafting standards.

New subsection 68(2) establishes that new subsection 68(1) does not apply if an application for a payment in respect of the goods can be made under new section 68.01 of the Act.

ETA

Section 68.01 – Payments for end-users for diesel fuel

New section 68.01 allows, subject to certain conditions, an end-user (a person other than a licensed excise taxpayer), to apply for a refund equal to the amount of tax paid in respect of diesel fuel.

Subsection 68.01(1) – Diesel fuel used as heating oil or to generate electricity

New subsection 68.01(1) provides that if tax has been paid under the Act in respect of diesel fuel, an application may be made and a refund may be paid, in the case where a vendor delivers the diesel fuel to a purchaser for use as heating oil,

- (a) to the vendor, if the vendor applies for the payment and the purchaser certifies that the diesel fuel is for use exclusively as heating oil and the vendor reasonably believes that the purchaser will use the diesel oil exclusively as heating oil,
- (b) to the purchaser, if the purchaser applies for the payment and uses the diesel fuel as heating oil and no application in respect of the diesel fuel can be made by the vendor.

New subsection 68.01(1) also provides that if tax has been paid under the Act in respect of diesel fuel, an application may be made and a refund may be paid, to a purchaser who uses the diesel fuel to generate electricity, except if the electricity so generated is used primarily in the operation of a vehicle.

Subsection 68.01(2) – Fuel used as ships' stores

New subsection 68.01(2) provides that if tax has been paid under the Act in respect of fuel, an application may be made and a refund may be paid, to a purchaser who uses the fuel as ships' stores, provided that no application in respect of the fuel is made by any person under section 68.17 or 70.

Subsection 68.01(3) – Time for application

New subsection 68.01(3) provides that no payment shall be made under this section unless the vendor described in subsection 68.01(1) applies for the refund within two years after selling the diesel fuel to the purchaser, or the purchaser described in subsection 68.01(1) or (2) applies within two years after the purchase.

Subsection 68.01(4) – Conditions

New subsection 68.01(4) provides that the Minister of National Revenue is not required to make any payment under this section unless satisfied that all the conditions for the payment have been met.

Subsection 68.01(5) – Deemed tax payable

New subsection 68.01(5) provides that if the Minister paid an amount to a person to which that person was not entitled, or if the Minister paid an amount to a person in excess of the amount to which that person was entitled, the amount of the payment, or the excess, is deemed to be a tax payable by that person under the Act on the day on which the Minister made the payment.

New subsections 68(1) and (2) and new section 68.01 come into force on September 3, 1985 except that, before March 20, 2007,

- (a) subsection 68(2) establishes that subsection 68(1) does not apply if an application for a payment in respect of the goods is made under section 68.01, and
- (b) under subsection 68.01(1), if tax has been paid under the Act in respect of diesel fuel, an application may be made and a refund may be paid, in the case where a vendor delivers diesel fuel to a purchaser for use as heating oil, to the purchaser, if the purchaser applies for the payment and uses the diesel fuel as heating oil and no application is made by the vendor.

ETA

Section 68.02 – Payments for end-users for Green Levy

New section 68.02 of the Act provides, subject to certain conditions, that if a person acquires a van that is equipped for wheelchair entry, and to which the Green Levy (see clause 44) applies and has been paid, the Minister may pay to the person an amount that is equal to the amount of the levy paid with respect to that van.

Subsection 68.02(1) – Van equipped for wheelchair

New subsection 68.02(1) provides that if the Green Levy has been paid in respect of a van, the Minister may pay to the first final consumer of that van (i.e., the first purchaser that is not in the business of selling vehicles) an amount equal to the amount of the levy paid,

- (a) in the case of a new van, whether domestically produced or imported, if the van was equipped at the time of the acquisition, or within six months after that time, with a device designed exclusively to assist in placing a wheelchair in the van without having to collapse the wheelchair, or
- (b) in the case of a used van imported into Canada, if the van was equipped at the time of importation with a device designed exclusively to assist in placing a wheelchair in the van without having to collapse the wheelchair.

Subsection 68.02(2) – Time for application

New subsection 68.02(2) provides that a payment under subsection (1) will only be made if the person applies for the payment within two years after the time the person acquires the van.

Subsection 68.02(3) – Deemed tax payable

New subsection 68.02(3) provides that if the Minister paid an amount to a person to which that person was not entitled, or if the Minister paid an amount to a person in excess of the amount to which that person was entitled, the amount of the payment, or the excess, is deemed to be a tax payable by that person under the Act on the day on which the Minister made the payment.

New section 68.02 applies in respect of each van to which the Green Levy applies.

Clause 44**Green Levy**

ETA

Schedule I, section 6

Section 6 of Schedule I to the Act currently describes the heavy vehicle tax. Section 6 is amended to replace the heavy vehicle tax with a Green Levy on fuel-inefficient automobiles.

The Green Levy applies to automobiles (including station wagons, vans and sport utility vehicles) designed primarily to carry passengers, but not including pickup trucks, vans with 10 or more seats, ambulances and hearses, in accordance with the vehicle's fuel-efficiency rating.

The vehicle's fuel-efficiency rating is calculated as a weighted average taking into account 55 per cent of city fuel consumption and 45 per cent of highway fuel consumption for the vehicle, as determined in accordance with information published by the Government of Canada under the EnerGuide mark.

Automobiles that have a weighted average fuel consumption rating of 13 or more litres per 100 kilometres are subject to the levy at the following rates:

- At least 13 but less than 14 litres per 100 kilometres, \$1,000;
- At least 14 but less than 15 litres per 100 kilometres, \$2,000;
- At least 15 but less than 16 litres per 100 kilometres, \$3,000; and
- 16 or more litres per 100 kilometres, \$4,000.

The Green Levy applies to new automobiles delivered or imported after March 19, 2007, as well as imported used automobiles put into service after March 19, 2007. Automobiles for which an agreement in writing was entered into before March 20, 2007 between a person in the business of selling vehicles to consumers and a final consumer are not subject to the Green Levy, provided the final consumer takes possession of the vehicle before October 2007.

Part 3
Amendments in Respect of the Goods and Services Tax/Harmonized Sales Tax
Excise Tax Act

Clause 45

Late filing of information and adjustment for failure to file

ETA

234(2.1)

Subsection 234(2) of the *Excise Tax Act* (the Act) allows a registrant who has paid or credited an amount to a person on account of a rebate under subsections 252(3), 252.1(8) or 252.4(2) or (4) of the Act to deduct that amount in determining the registrant's net tax.

Section 234 is amended by adding new subsection (2.1) that requires a registrant to add an amount in determining net tax if the prescribed information under new subsection 252.1(10) or 252.4(5) is filed late or not filed within a specified period of time.

New paragraph 234(2.1)(a) addresses the situation where the registrant is late in filing the information but nevertheless files the information before the particular day that is the earlier of the day stipulated by the Minister in a demand to file the information and the day that is four years after the day on or before which the registrant was required under section 238 of the Act to file a return for the reporting period in which the registrant claimed the deduction under subsection 234(2). In this case, the registrant must, in determining the net tax for the reporting period of the registrant that includes the particular day, add an amount equal to interest, at the prescribed rate, on the amount claimed as a deduction under subsection 234(2). The interest is computed for the period beginning on the day on or before which the registrant was required to file the prescribed information in accordance with subsection 252.1(10) or 252.4(5) and ending on the day the information is filed.

New paragraph 234(2.1)(b) addresses the situation where the registrant fails to file the information before the particular day that is the earlier of the day stipulated by the Minister in a demand to file the information and the day that is four years after the day on or before which the registrant was required under section 238 to file a return for the period in which the registrant claimed the deduction under subsection 234(2). In this situation, the registrant must, in determining the net tax for the reporting period of the registrant that includes the particular day, add an amount equal to the total of the amount claimed as a deduction under subsection 234(2) and interest, at the prescribed rate, on that amount. The interest is computed for the period beginning on the day on or before which the registrant was required to file the information in accordance with subsection 252.1(10) or 252.4(5) and ending on the day on or before which the registrant is required under section 238 to file a return for the reporting period of the registrant that includes the particular day.

New subsection 234(2.1) applies in respect of any amount claimed as a deduction under subsection 234(2) in respect of an amount that is paid to, or credited in favour of, a person after March 2007 and that relates to a supply for which tax under Part IX of the Act becomes payable after March 2007.

Clause 46**Non-resident rebate in respect of exported goods**

ETA
252(1)

Subsection 252(1) of the Act provides for a rebate equal to the GST/HST paid by a non-resident person on goods purchased in Canada and exported or taken out of Canada by the person within 60 days of the day the goods are delivered to the person.

Subsection 252(1) is amended to allow only a rebate to non-resident persons who are not consumers of the goods.

The amendment applies to any supply of goods in respect of which tax under Part IX of the Act becomes payable after March 2007.

Clause 47**Accommodation rebate for tour packages**

ETA
252.1

Section 252.1 of the Act provides a rebate of tax paid in respect of short-term accommodation, camping accommodation or short-term accommodation or camping accommodation included in a tour package that is made available to a non-resident.

Subclause 47(1)

ETA
252.1(2)

Subsection 252.1(2) provides a rebate to non-residents of GST/HST paid on certain accommodation. Specifically, a rebate is available to non-resident persons who pay GST/HST on short-term accommodation, camping accommodation or tour packages that include short-term accommodation or camping accommodation.

Subsection 252.1(2) is amended to limit the rebate to situations where a non-resident is the recipient of a supply of a tour package.

The amendment applies in respect of any supply of short-term accommodation, camping accommodation or a tour package that includes short-term accommodation or camping accommodation, for which the accommodation is first made available after March 2007. However the former rebate continues to apply in the case of accommodation not included in a tour package if the accommodation is first made available after March 2007 and before April 2009 and the supply of the accommodation is made under an agreement in writing entered into before September 25, 2006. The former rebate also continues to apply in the case of accommodation included in a tour package if the first night of accommodation in Canada included in the tour package is made available after March 2007 and before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 47(2)**Accommodation rebate to non-resident supplier of tour packages**

ETA

252.1(3)

Subsection 252.1(3) entitles an unregistered non-resident tour operator to a rebate in respect of short-term accommodation, camping accommodation or short-term accommodation or camping accommodation included in a tour package that the operator acquires and resells to non-resident persons at a place outside of Canada where the tour operator or the operator's agent is conducting business. An unregistered non-resident tour operator may claim a rebate only to the extent that the accommodation is ultimately made available to a non-resident consumer.

Subsection 252.1(3) is amended to limit the rebate to situations where an unregistered non-resident tour operator is the recipient of a supply of a tour package that includes short-term accommodation or camping accommodation or a supply of short-term accommodation or camping accommodation that will be used by the non-resident tour operator for the purposes of making a supply of a tour package that includes accommodation to a non-resident.

The amendment applies in respect of any supply of short-term accommodation, camping accommodation or a tour package that includes short-term accommodation or camping accommodation, for which accommodation is first made available after March 2007. However the former rebate continues to apply in the case of accommodation not included in a tour package if the accommodation is first made available after March 2007 and before April 2009 and the supply of the accommodation is made under an agreement in writing entered into before September 25, 2006. The former rebate also continues to apply in the case of accommodation included in a tour package if the first night of accommodation in Canada included in the tour package is made available after March 2007 and before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 47(3)**Tax paid in respect of accommodation**

ETA

252.1(4)

Subsection 252.1(4) provides a simplified method that non-resident consumers eligible for a rebate under subsection 252.1(2) in respect of accommodation that is not included in a tour package may use to calculate that rebate. The rebate in this circumstance may be determined on the basis of \$5 for each night of short-term accommodation and \$1 for each night of camping accommodation available under the agreement for the supply.

The amendment repeals subsection 252.1(4) since non-resident consumers are no longer eligible for a rebate under amended subsection 252.1(2) in respect of accommodation that is not included in a tour package.

The amendment applies to any supply of short-term accommodation or camping accommodation for which accommodation is first made available after March 2007, unless the accommodation is first made available before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclauses 47(4) and (5)**Tax paid in respect of tour package**

ETA

252.1(5)

Subsection 252.1(5) sets out the rules for calculating a rebate in respect of accommodation included in a tour package. Included in these rules is a streamlined method of calculating rebates for use by non-resident consumers and unregistered non-resident tour operators entitled to a rebate under subsections 252.1(2) and (3) respectively.

Subsection 252.1(5) is amended to clarify that the rebate in respect of short-term accommodation and camping accommodation included in a tour package is equal to 50% of the tax paid on the tour package, pro-rated by the fraction of the total number of nights spent in Canada during the tour that short-term accommodation or camping accommodation is provided in Canada as part of the package. The amendments also clarify that the streamlined method for calculating the rebate applies for each night of short-term accommodation or camping accommodation made available in Canada and included in the tour package.

The amendments apply to any supply of a tour package that includes short-term accommodation or camping accommodation, for which accommodation is first made available after March 2007, unless the first night of accommodation in Canada included in the tour package is made available before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 47(6)**Multiple supplies of accommodation for the same night**

ETA

252.1(6)

Subsection 252.1(6) provides that a consumer may not, under subsection 252.1(4), claim a rebate on the basis of \$5 or \$1 per night for more than one supply from the same supplier of short-term accommodation or camping accommodation for any given night.

The amendment repeals subsection 252.1(6) following the repeal of subsection 252.1(4) since non-resident consumers are no longer eligible for a rebate under amended subsection 252.1(2) in respect of accommodation that is not included in a tour package.

The amendment applies to any supply of short-term accommodation or camping accommodation for which accommodation is first made available after March 2007, unless the accommodation is first made available before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclauses 47(7) to (9)**Rebate paid by registrant**

ETA

252.1(8)

Under subsection 252.1(8) a registrant supplier of short-term accommodation, camping accommodation or a tour package that includes short-term accommodation or camping accommodation can claim a deduction under subsection 234(2) of the Act in certain circumstances where the registrant pays to, or credits in favour of, the recipient an amount on account of a rebate to which the recipient would be entitled under subsection 252.1(2) or (3) if the recipient were to file the necessary application.

Subsection 252.1(8) is amended to limit the deduction under subsection 234(2) to the situations where the supplier supplies a tour package that includes short-term accommodation or camping accommodation to a non-resident recipient.

The amendment applies in respect of any supply of short-term accommodation, camping accommodation or a tour package that includes short-term accommodation or camping accommodation, for which accommodation is first made available after March 2007. However the former provision continues to apply in the case of accommodation not included in a tour package if the accommodation is first made available after March 2007 and before April 2009 and the supply of the accommodation is made under an agreement in writing entered into before September 25, 2006. The former provision also continues to apply in the case of accommodation included in a tour package if the first night of accommodation in Canada included in the tour package is made available after March 2007 and before April 2009 and the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 47(10)

Filing of information

ETA

252.1(10)

The amendment adds new subsection 252.1(10), which provides that if a registrant, in determining the net tax for a reporting period of the registrant, claims a deduction under subsection 234(2) in accordance with subsection 252.1(8) in respect of an amount paid to, or credited in favour of, a non-resident recipient, the registrant is required to file prescribed information in prescribed form and in prescribed manner with the Minister in respect of the amount paid or credited. The information is required to be filed on or before the day on or before which the registrant's return under Division V for the reporting period in which the amount is deducted under subsection 234(2) is required to be filed.

The amendment applies in respect of any supply of a tour package for which tax under Part IX of the Act becomes payable after March 2007 and for which the supplier claimed an amount as a deduction under subsection 234(2) in respect of an amount that the supplier paid to, or credited in favour of, a non-resident person after March 2007.

Clause 48

Restriction on rebates

ETA

252.2

Section 252.2 of the Act sets out restrictions on the claiming of rebates under section 252 or subsection 252.1(2) or (3) of the Act.

Section 252.2 is amended to remove a restriction relating to rebates in respect of short-term accommodation, or camping accommodation, not included in a tour package that are determined in accordance with the formula in subsection 252.1(4), following the repeal of subsection 252.1(4).

The amendment applies for the purpose of determining any rebate under section 252 or 252.1, unless the rebate is in respect of short-term accommodation, or camping accommodation, not included in a tour package and the rebate is determined in accordance with the formula in subsection 252.1(4).

Clause 49**Rebate in respect of foreign conventions**

ETA

252.4

Section 252.4 of the Act provides for a rebate to a sponsor or unregistered organizer of a foreign convention in respect of the GST/HST on certain property or services acquired, imported or brought into a participating province in relation to the convention.

Subclauses 49(1)**Rebate in respect of foreign conventions**

ETA

252.4(1)

Subsection 252.4(1) provides a rebate of the tax paid by a sponsor of a foreign convention in respect of a convention facility or property or services that are acquired, imported or brought into a participating province for use at the convention.

Subsection 252.4(1) of the French version of the Act is amended by replacing the expression “liés au congrès” by the expression “relatifs au congrès” to ensure consistency between both official versions of the Act in respect of a rebate of the tax paid by the sponsor.

The amendment applies in respect of the supply, importation or bringing into a participating province of property or services in relation to, or in connection with, a convention that begins after March 2007, except that the amendment does not apply in respect of a supply of property or services in relation to, or in connection with, a convention that begins before April 2009 if the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 49(2)**Rebate to organizer**

ETA

252.4(3)

Subsection 252.4(3) provides that an unregistered organizer of a foreign convention may claim a rebate of tax paid in respect of the convention facility or related convention supplies that are acquired, imported or brought into a participating province for use at the convention. Paragraphs 252.4(3)(a) and (b) specify that a rebate is available for the total of tax paid by the organizer on the part of the consideration for the supply that is attributable to the convention facility, related convention supplies (other than food, beverages or are supplied under a contract for catering) or 50% of tax paid by the organizer that is reasonably attributable to related convention supplies that are food or beverages or are supplied under a contract for catering.

Subsection 252.4(3) is amended to clarify that in the case of an importation, the tax paid by the organizer is calculated on the part of the value of imported property that is reasonably attributable to the convention facility or related convention supplies other than property or services that are food or beverages or are supplied under a contract for catering.

The amendment applies in respect of the supply, importation or bringing into a participating province of property or services in relation to, or in connection with, a convention that begins after March 2007, except that the amendment does not apply in respect of a supply of property or services in relation to, or in connection with, a convention that begins before April 2009 if the supply is made under an agreement in writing entered into before September 25, 2006.

Subclause 49(3)**Filing of information**

ETA

252.4(5)

The amendment adds new subsection 252.4(5), which provides that if a registrant, in determining the net tax for a reporting period of the registrant, claims a deduction under subsection 234(2) of the Act in accordance with subsection 252.4(2) or (4) in respect of an amount paid to, or credited in favour of, a person, the registrant is required to file prescribed information in prescribed form and in prescribed manner with the Minister in respect of the amount paid or credited. The information is required to be filed on or before the day on or before which the registrant's return under Division V for the reporting period in which the amount is deducted under subsection 234(2) is required to be filed.

The amendment applies in respect of any supply relating to a foreign convention for which tax under Part IX of the Act becomes payable after March 2007 and for which the supplier claimed an amount as a deduction under subsection 234(2) in respect of an amount that the supplier paid to, or credited in favour of, a person after March 2007.

Clause 50**Definition "practitioner"**

ETA

Schedule V, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule V to the Act lists the types of health care professionals who are not required to charge tax in respect of their supplies of health care services itemized in sections 7 and 7.1 of Part II of Schedule V.

The definition "practitioner" is amended to add those persons practising the profession of midwifery to the list.

The amendment applies to supplies made after December 28, 2006.

Clause 51**Midwives' services**

ETA

Schedule V, Part II, section 7

Section 7 of Part II of Schedule V to the Act lists the services of health care practitioners whose supplies are exempt in all provinces from the GST/HST even when made in a province that does not cover the services under its own provincial health care plan.

The amendment adds midwifery to the list of exempt services of health care practitioners. The profession of midwifery satisfies the policy criteria for GST/HST exemption since it is regulated as a health profession by at least five provinces.

The amendment applies to supplies made after December 28, 2006.

Clause 52**Exports of intangible personal property**

ETA

Schedule VI, Part V, section 10.1

New section 10.1 of Part V of Schedule VI to the Act zero-rates supplies of intangible personal property (IPP) made to unregistered non-resident persons, except for supplies described by any of paragraphs 10.1(a) to (e) as explained below.

First, paragraph 10.1(a) excludes a supply of IPP made to a non-resident individual from zero-rating under new section 10.1 unless the individual is outside Canada when the supply is made. For example, the sale of a downloadable music file made to a non-resident who purchases the file while in Canada would not be zero-rated under new section 10.1.

Second, subparagraphs 10.1(b)(i) and (ii) exclude from zero-rating supplies of IPP that relate to real property situated in Canada or tangible personal property ordinarily situated in Canada. For example, two supplies of IPP, the first being the sale of a right of first refusal to purchase land situated in Canada and the second, the sale of a right of first refusal to purchase mining equipment ordinarily situated in Canada, would be excluded from zero-rating by subparagraphs 10.1(b)(i) and (ii) respectively. Also, subparagraph 10.1(b)(iii) excludes a supply of IPP that relates to a service the supply of which is made in Canada and is not a supply of a service that is zero-rated by any section of Parts V, VII or IX of Schedule VI. For example, a supply of IPP that is a fitness club membership giving a right to services of the club's instructors for lessons in Canada would be excluded from zero-rating.

Third, paragraph 10.1(c) excludes from zero-rating a supply of IPP that is the making available of a "telecommunications facility", as defined in subsection 123(1) of the Act, for use in providing a service described by paragraph (a) of the definition "telecommunication service" in that subsection.

Fourth, paragraph 10.1(d) excludes from zero-rating supplies of IPP that may be used only in Canada, such as the supply of IPP that is a franchise right allowing operation of a business solely in Canada. A supply of IPP that may be used both in Canada and outside Canada would not be excluded from zero-rating by paragraph 10.1(d).

Finally, paragraph 10.1(e) allows supplies that are prescribed by regulation to be excluded from zero-rating, although no supply is currently envisaged to be so prescribed.

New section 10.1 is deemed to have come into force on December 17, 1990, except that it does not apply to any supply in respect of which the supplier, on or before March 19, 2007, charged or collected any amount as or on account of GST/HST.

A special rule applies to any supplier who has not charged or collected any amount as or on account of GST/HST, and was assessed for failing to collect tax, in respect of a supply of IPP made before March 20, 2007 that is zero-rated under new section 10.1. If such a supplier makes a request in writing to the Minister of National Revenue not later than two years after Royal Assent is given for the enactment of section 10.1, a reassessment will be made to take into account new section 10.1, even if the normal time limit for reassessment has expired.

Clause 53**Coordinating amendments**

ETA

252.1 and Schedule V, Part II, section 1

This clause concerns provisions of Part IX of the Act that are being amended by both the *Sales Tax Amendments Act, 2006* and the *Budget Implementation Act, 2007*, which have been introduced in the 1st session of the 39th Parliament. The amendments contained in this clause ensure that the proper result is achieved with respect to provisions of the *Excise Tax Act* being amended in both those amending Acts, irrespective of which Act comes into force first.

